

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
HONORABLE OTIS D. WRIGHT
UNITED STATES DISTRICT JUDGE PRESIDING

- - -

United States of America,)
PLAINTIFF,)
VS.) NO. CR 10-351 ODW
Carlos Rivera, Jessica Medina, Raul)
Prieto,)
DEFENDANT,)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

LOS ANGELES, CALIFORNIA

JURY TRIAL - DAY FIVE

TUESDAY, DECEMBER 11, 2012

KATIE E. THIBODEAUX, CSR 9858
U.S. Official Court Reporter
312 North Spring Street, #436
Los Angeles, California 90012

1 APPEARANCES OF COUNSEL:

2

3 FOR PLAINTIFF:

4 U.S. DEPARTMENT OF JUSTICE
5 U.S. ATTORNEY'S OFFICE
6 BY: REEMA EL-AMAMY, AUSA
-and- MICHAEL DORE, AUSA
7 312 North Spring Street
Twelfth Floor
Los Angeles, CA 90012

8

9 FOR DEFENDANT RIVERA:

10 ANGEL NAVARRO LAW OFFICE
11 BY: ANGEL NAVARRO
12 714 West Olympic Boulevard
Suite 450
Los Angeles, CA 90015

13

14

15 FOR DEFENDANT MEDINA:

16 JOSEPH F. WALSH LAW OFFICES
17 BY: JOSEPH F. WALSH
205 South Broadway
Suite 606
18 Los Angeles, CA 90012

19

20 FOR DEFENDANT PRIETO:

21 CEPHAS LAW FIRM
22 BY: DANA CEPHAS
72960 Fred Waring Drive
Palm Desert, CA 92260

23

24

25

I N D E X

<u>WITNESS NAME</u>	<u>PAGE</u>
---------------------	-------------

MANUEL CORONA

Direct Examination by Mr. Cephas	7
Cross-Examination by Ms. El-Amamy	12
Redirect Examination	16

VELIA PRIETO

Direct Examination by Mr. Cephas	18
Cross-Examination by Ms. El-Amamy	33

STEVE WALTON

Direct Examination by Mr. Cephas	45
Cross-Examination by Mr. Dore	54
Reirect Examination	56
Recross-Examination	57

JURY INSTRUCTIONS	64
-------------------	----

<u>CLOSING ARGUMENTS</u>	<u>PAGE</u>
--------------------------	-------------

By Mr. Dore	104
By Mr. Navarro	141
By Mr. Walsh	154
By Mr. Cephas	175
By Ms. El-Amamy	197

1 LOS ANGELES, CALIFORNIA; TUESDAY, DECEMBER 11, 2012

2 8:04 A.M.

3 - - - - -

4
5
6 (The following proceedings were held outside the
7 presence of the jury:)

8 THE COURT: Let's go on the record on the United
9 States of America versus Armando Barajas, Case No.
10 CR 10-00351. Appearances, please.

11 MS. EL-AMAMY: Morning, your Honor. Reema
12 El-Amamy and Michael Dore on behalf of the United States.

13 MR. WALSH: Joseph Walsh on behalf of Jessica
14 Medina who is present in court.

15 MR. CEPHAS: Good morning, your Honor. Dana
16 Cephas for Raul Prieto who is present in court.

17 MR. NAVARRO: Good morning, your Honor. Angel
18 Navarro with Mr. Rivera. He is seated to my left.

19 THE COURT: Good morning all. Yes. Outside the
20 presence of the jury. There is a motion?

21 MR. CEPHAS: Yes, your Honor. Assuming the
22 government is resting now, I would move to dismiss Count
23 1 against my client pursuant to Rule 29. Count 1 is the
24 RICO conspiracy.

25 THE COURT: Is your mic on? Actually, I don't

1 want it -- no. No. The jury is standing right out in
2 the corridor.

3 Go ahead.

4 MR. CEPHAS: I do not believe that the government
5 has put on enough evidence. I do not believe the
6 government has put on enough evidence that any jury could
7 find beyond a reasonable doubt that my client conspired
8 to violate RICO with respect to Count 1, and, therefore,
9 I would ask that -- excuse me -- I would ask the court to
10 dismiss that count against my client and not let that
11 count go to the jury.

12 THE COURT: Okay.

13 MR. WALSH: And on behalf of Ms. Medina, your
14 Honor, the defense moves for judgment of acquittal under
15 Rule 29 on all four counts.

16 MR. NAVARRO: Submit on that motion as well.

17 THE COURT: On under Rule 29B, the court will
18 reserve ruling. All right.

19 (The following proceedings were held in the
20 presence of the jury:)

21 THE CLERK: Calling Item 1, CR 10-351, United
22 States of America versus Carlos Rivera.

23 Counsel, may I have all appearances please.

24 MS. EL-AMAMY: Good morning, your Honor. Reema
25 El-Amamy and Michael Dore on behalf of the United States.

1 MR. WALSH: Joseph Walsh on behalf of Jessica
2 Medina who is present.

3 MR. CEPHAS: Good morning, your Honor. Dana
4 Cephas on behalf of Raul Prieto who is present.

5 THE COURT: All right.

6 MR. NAVARRO: Good morning, your Honor. Angel
7 Navarro with Mr. Rivera seated to my left.

8 THE COURT: Good morning to you all and good
9 morning, ladies and gentlemen of the jury. All right.

10 When we left off Friday, we were nearing or at
11 the end of the government's case.

12 Ms. El-Amamy.

13 MS. EL-AMAMY: The government rests, your Honor.

14 THE COURT: Ladies and gentlemen, this concludes
15 the presentation of evidence by the prosecution. Now, we
16 begin the defense case in chief, and, in no particular
17 order, which defendant would like to proceed first?

18 MR. CEPHAS: I would, your Honor.

19 THE COURT: All right. Mr. Cephas.

20 MR. CEPHAS: The defense calls Manuel Corona.

21 The witness is in the restroom, your Honor.
22 He will be here.

23 THE COURT: Do you have another witness?

24 Of the three witnesses names you have on your
25 witness list, are any of them here?

1 MR. CEPHAS: Yes. They are all three here.

2 THE COURT: Can we put someone on?

3 MR. CEPHAS: I believe he is going to get one of
4 them right now, your Honor.

5 (The witness was sworn.)

6 THE CLERK: Please be seated. Please state your
7 name and spell it for the record.

8 THE WITNESS: Manuel Corona, C-O-R-O-N-A.

9 THE COURT: All right. Mr. Cephas.

10

11 DIRECT EXAMINATION

12 BY MR. CEPHAS:

13 Q Good morning, Mr. Corona.

14 A Good morning.

15 Q Do you know Mr. Raul Prieto who is sitting in the
16 courtroom?

17 A I do.

18 Q How many years have you known him?

19 A I have known him about 10 years already since I was
20 like 13, 12.

21 Q Do you know what a tagging crew is?

22 A Yes, I do.

23 Q What is a tagging crew?

24 MS. EL-AMAMY: Objection, your Honor. Relevance.

25 THE COURT: Sustained.

1 Q BY MR. CEPHAS: Do you know -- have you heard of a
2 tagging crew named KMR?

3 MS. EL-AMAMY: Same objection, your Honor.

4 MR. CEPHAS: Your Honor, testimony has come in
5 from --

6 THE COURT: It was irrelevant then. It is still
7 irrelevant.

8 MR. CEPHAS: Your Honor, may I approach the clerk
9 with exhibits, please.

10 THE COURT: Yes.

11 Q BY MR. CEPHAS: Mr. Corona, would you look at the
12 three exhibits that have been placed in front of you.

13 Have you had a chance to look at those
14 three exhibits?

15 A Yes.

16 Q Are they photographs?

17 A Yeah.

18 Q And is there a person in the photographs?

19 A Yes, there is.

20 Q And were you at the scene of what is depicted in
21 the photographs?

22 A I was.

23 Q And these photographs are pictures of KMR graffiti;
24 is that correct?

25 A Yes, that's correct.

1 Q And do these photographs accurately reflect what
2 the KMR graffiti murals look like?

3 A Yes, they do.

4 MR. CEPHAS: Your Honor, move to admit Defense
5 Exhibit 1000, 1001 and 1002.

6 MS. EL-AMAMY: Your Honor, there has been no
7 testimony as to when these photographs were taken, if
8 they were taken any time near the conduct in this trial.

9 MR. CEPHAS: Your Honor, the government has put on
10 numerous pictures --

11 THE COURT: No. We are talking about foundation
12 for these pictures.

13 And what is the relevance of these pictures?
14 What is the relevance of graffiti?

15 MR. CEPHAS: Excuse me, your Honor?

16 THE COURT: What is the relevance of all this
17 street art or graffiti or anything else?

18 MR. CEPHAS: The government has put on numerous
19 photos of Black Angels graffiti and have suggested that
20 my client is tied to Black Angels graffiti, and I think
21 it is completely relevant to show that my client, as the
22 government's witness testified to, was a member of KMR
23 and to show the difference between the kind of graffiti
24 art that my client does versus the, say, chicken scratch
25 kind of gang graffiti that Black Angels members do.

1 THE COURT: Okay. Stop. The graffiti that we
2 looked at during the government's case in chief was
3 really based upon content of what was in there to
4 demonstrate an association with that particular
5 organization.

6 This, obviously, is much more artistic. Are
7 you saying that membership or involvement in
8 one precludes membership or involvement in the other?

9 MR. CEPHAS: Yes, I am. And the reason I am
10 saying that --

11 THE COURT: There is no testimony on that.

12 MR. CEPHAS: There is, your Honor.

13 THE COURT: There is not.

14 MR. CEPHAS: I can point --

15 THE COURT: Nor do we have -- you do that one more
16 time. You do that one more time.

17 MR. CEPHAS: Your Honor?

18 THE COURT: Do we have any testimony as to when
19 these photographs were taken?

20 MR. CEPHAS: I will ask the witness.

21 THE COURT: Well, do that before you seek to admit
22 them.

23 Q BY MR. CEPHAS: Mr. Corona, look at the first exhibit
24 with the silver KMR letters. Can you tell me
25 approximately when that photograph was taken?

1 A Around 2009.

2 Q And look at the second KMR with gold letters. Can
3 you tell me approximately when that photograph was taken
4 and when it was drawn?

5 A 2009.

6 Q And the third, the third KMR mural, can you tell me
7 approximately when that was taken?

8 A 2009.

9 Q Okay.

10 MR. CEPHAS: Your Honor, there was testimony, and
11 I can direct the court to the transcript where
12 Mr. Navarro said that Mr. Prieto was a member of KMR and
13 that he would have to quit KMR when he joined OVS, and
14 that he could not -- he could no longer do KMR if he was
15 going to be a member of OVS. And I have the transcript
16 tabbed. I can show the court the page where Mr. Navarro
17 testified as to that.

18 THE COURT: I would like to see that.

19 MR. CEPHAS: One moment, your Honor.

20 (Pause in proceedings.)

21 MR. CEPHAS: Your Honor, and I will approach the
22 court, but for the record, Page 104 of Day 3, Thursday,
23 December 6th, 2012. May I approach?

24 THE COURT: Yes.

25 (The following proceedings were held at sidebar

1 outside the presence of the jury:)

2 THE COURT: This is Rivera?

3 MR. CEPHAS: This is Navarro's testimony.

4 THE COURT: Have you seen this?

5 Do you recall whether or not there was any
6 cross-examination on this?

7 MS. EL-AMAMY: I don't believe that he was crossed
8 on this.

9 THE COURT: Okay.

10 MS. EL-AMAMY: That is my recollection.

11 THE COURT: Okay. Thanks.

12 (The following proceedings were held in the
13 presence of the jury:)

14 THE COURT: I am going to defer ruling on your
15 motion to admit these until there has been cross either
16 by the government or by the court. But go ahead.

17 MR. CEPHAS: Your Honor, I have no further
18 questions. I just want the jury to see the photographs.

19 THE COURT: Okay. Not yet. Cross.

20

21 CROSS-EXAMINATION

22 BY MS. EL-AMAMY:

23 Q Morning, Mr. Corona.

24 A Morning.

25 Q I want you to take a look at Exhibit 1001 which is

1 the middle photograph. Do you see what is written in
2 that little white square in the middle?

3 A Yes.

4 Q What is written there?

5 A Crook.

6 Q Is that the name that you knew Mr. Prieto to go by?

7 A Yes. That was his graffiti name.

8 Q Now, you testified that all of these pictures took
9 place in 2009?

10 A 2009. 2009 or almost at the end of 2008.

11 Q At the end of 2008 or the beginning of 2009?

12 A Yeah. Like January or --

13 Q So this happened before the summer of 2009?

14 A No. After. In 2009. It happened in 2009. Yeah
15 it happened in the summer before 2009.

16 Q In the summer before 2009.

17 Q So before June, 2009?

18 A Yes.

19 Q Were you at defendant Prieto's house in July of
20 2009?

21 A No, I wasn't.

22 Q Did you know Mr. Prieto in July of 2009?

23 A I did.

24 Q Were you there on a date in July, 2009 -- I'm
25 sorry. Do you know an individual named Carlos Rivera?

1 A If I knew him?

2 Q Do you know him?

3 MR. CEPHAS: Objection. Outside the scope, your
4 Honor.

5 THE WITNESS: Yes, I know him.

6 Q BY MS. EL-AMAMY: You know him?

7 A Yes.

8 Q Were you ever there when Mr. Prieto --

9 MR. CEPHAS: Same objection, your Honor.

10 THE COURT: Where is this going?

11 MS. EL-AMAMY: Your Honor, I will withdraw from
12 that line of questioning.

13 Q All right. So these photographs all took place at
14 the latest in January, 2009?

15 A Yes. I can't recall exactly the dates of them
16 because we did a lot from like my best of knowledge
17 around 2009.

18 MS. EL-AMAMY: All right. No further questions.

19 THE COURT: Were you present when any of these
20 photographs were taken?

21 THE WITNESS: Do I know when? Where?

22 THE COURT: No. Were you present at the time
23 these photographs were taken?

24 THE WITNESS: I was.

25 THE COURT: Okay. And how do you place the date

1 at 2009, 2008?

2 THE WITNESS: I remember having some in my book
3 and my camera showed a date on them.

4 THE COURT: All right. So have you looked at
5 these pictures in preparation for trial?

6 THE WITNESS: Not for trial, but I have seen them
7 before.

8 THE COURT: Were you asked to look through your
9 pictures or materials in order to ascertain when these
10 pictures were taken?

11 THE WITNESS: No.

12 THE COURT: The first time you have been asked as
13 to when these pictures were taken is right now during
14 this case?

15 THE WITNESS: Yes.

16 THE COURT: And you were able to clearly remember
17 and testify affirmatively that these pictures were taken
18 three years ago?

19 THE WITNESS: Yes.

20 THE COURT: And there is nothing specific about
21 these pictures or the event which would cause you to
22 remember clearly that these pictures were taken
23 three years ago?

24 THE WITNESS: Specific as in what, though? I
25 don't get it.

1 THE COURT: I don't know. You had just come back
2 from Washington, DC, from the inauguration. Anything.
3 Is there any specific event that happened
4 contemporaneously with the taking of these pictures which
5 would help you place the date?

6 THE WITNESS: No.

7 THE COURT: Okay. Thanks. Any further questions
8 by either counsel?

9 MS. EL-AMAMY: No, your Honor.

10 MR. CEPHAS: Your Honor, are you going to allow me
11 to show the photos to the jury?

12 THE COURT: Yes.

13

14 REDIRECT EXAMINATION

15 BY MR. CEPHAS:

16 Q Mr. Corona, I have placed exhibit, Defense Exhibit
17 1000 on the monitor. Do you see that?

18 A Yes.

19 Q And is that one of the KMR murals that Mr. Prieto
20 painted to your knowledge?

21 A Yes. That is one of them.

22 Q Now I am placing Defense Exhibit 1001. Is that
23 also a KMR mural that Mr. Prieto painted?

24 A Yes, it is.

25 Q And, now, I am showing you Defense Exhibit 1002.

1 Is that another KMR mural that Mr. Prieto has painted?

2 A Yes, it is.

3 Q And I notice that the three are all different
4 styles. Did you see that?

5 A Yes.

6 Q Approximately how many KMR murals have you seen
7 Mr. Prieto paint over the years?

8 A Around 50, 60.

9 MR. CEPHAS: Nothing further, your Honor.

10 THE COURT: Okay. Anything further, Ms. El-Amamy?

11 MS. EL-AMAMY: No, your Honor.

12 THE COURT: All right. Sir, you may step down.

13 Your next witness.

14 MR. CEPHAS: Your Honor, defense calls Velia
15 Prieto.

16 (The witness was sworn.)

17 THE CLERK: Please state your full name for the
18 record.

19 THE WITNESS: Velia G. Prieto.

20 THE COURT: All right, Mr. Cephas.

21 And, by the way, 1000 through 1002 are
22 admitted into evidence.

23 MR. CEPHAS: Thank you, your Honor.

24 ///

25 DIRECT EXAMINATION

1 BY MR. CEPHAS:

2 Q Good morning.

3 A Good morning.

4 Q If at any time you have trouble hearing a question
5 or unclear, just ask me, and I will repeat it. Okay?

6 A Okay.

7 Q Are you Raul Prieto's mother?

8 A Yes, I am.

9 Q Where do you live?

10 A 642 East E Street in Ontario, California.

11 Q Does Raul Prieto live there?

12 A Yes, he does.

13 Q He was in custody for about 10 months before he got
14 out on bail. Has he lived in that house since he was
15 released on bail?

16 A Yes, he has.

17 Q Who owns the house?

18 A I do.

19 Q What year did you move to that house?

20 A 1989.

21 Q Mr. Prieto was born in 1985; is that correct?

22 A Yes, he was.

23 Q So he has lived there since he was about four years
24 old?

25 A Yes, he has.

1 Q Any other sons living there with you?

2 A Right now, Jesus Prieto, my youngest, and my other
3 son, Henry Prieto, was living there also.

4 Q Are you familiar with the defendant Carlos Rivera?

5 A Yes, I am.

6 Q How old was he when you first met him?

7 A About 12.

8 Q How would you characterize your relationship with
9 Mr. Rivera?

10 A Like my son.

11 Q He is not actually your son; correct?

12 A No, he is not.

13 Q Does -- did Mr. Rivera spend a lot of time at your
14 house over the years?

15 A Oh, yes.

16 Q If he came to your house, would he have to knock on
17 the door?

18 A No.

19 Q He would just go right in?

20 A Just walk in.

21 Q Like it is his home?

22 A Like it is his house. It is his house.

23 Q What name does he call you?

24 A Mom.

25 Q And what name do you call Mr. Rivera?

1 A My son or Chino or Mijo. That means son in
2 Spanish, Mijo.

3 Q How long have you referred to him like that as your
4 son?

5 A From practically, a good 12,13 years, as long as he
6 has been around.

7 Q How long has he referred to you as Mom?

8 A A long time, the same.

9 Q Has Mr. Rivera been close friends with anyone in
10 particular in your family?

11 A With all my family. With my sons, my husband,
12 nieces, nephews, whoever is there.

13 Q Now, you mentioned three sons, Henry, Jesus and
14 Raul. They all lived there at the same time?

15 A Yes.

16 Q There has been testimony that -- referring to
17 Mr. Rivera as a cousin of Mr. Prieto. Are you related,
18 actually related to Mr. Rivera?

19 A No.

20 Q Are any of your sons actually cousins of
21 Mr. Rivera?

22 A No.

23 Q Was your son Henry older than Rivera?

24 A Yes, he was.

25 Q Was Henry close to Rivera?

1 A Yes.

2 Q How about Jessie?

3 A Very.

4 Q How about Raul?

5 A Very. They seem like a brother.

6 Q Now, there has been testimony in this case that
7 Mr. Rivera was on parole. I don't want to know why, if
8 you know, but did Mr. Rivera go to prison some time in
9 2008?

10 A Yes, he did.

11 Q Did Mr. Rivera going to prison have any adverse
12 effect on any of your sons?

13 A Yes, it did.

14 Q Which son did it have an effect on?

15 A My oldest Henry.

16 MS. EL-AMAMY: Objection. Relevance.

17 THE COURT: Sustained.

18 Q BY MR. CEPHAS: Did your son Henry do anything after
19 Rivera went to prison?

20 A Yes, he did.

21 MS. EL-AMAMY: Objection. Vague.

22 THE COURT: Sustained.

23 Q BY MR. CEPHAS: What did he do after Rivera went to
24 prison?

25 MS. EL-AMAMY: Same objection.

1 THE COURT: Overruled.

2 THE WITNESS: He left.

3 Q BY MR. CEPHAS: Why did he leave?

4 A Because Rivera wasn't there to protect him. He
5 felt lonely without him. He was -- he was his big
6 brother. Even though my son was older, he was his big
7 brother.

8 Q And so --

9 A He went to Oregon. He left me a note saying that,
10 why he left, and he committed suicide in Oregon.

11 Q Was Rivera like a big brother to all your sons?

12 A Yes, he was. They looked up to him.

13 Q Did you visit your son Raul Prieto when he was --
14 when he was arrested when he was in custody in this case
15 when he was at San Bernardino jail?

16 A Yes.

17 Q Did you also visit Mr. Rivera when he was in
18 custody at San Bernardino?

19 A Yes.

20 Q Did you visit Mr. Rivera often?

21 A Yes.

22 Q Why did you visit Mr. Rivera?

23 A Because he is like my son.

24 Q Still consider him like your son?

25 A Yes.

1 Q Did Mr. Rivera spend a lot of time at your house
2 when he was young, 12, 13, 14, 15 years old?

3 A Yes.

4 Q Did he ever spend the night at your house?

5 A Yes. Numerous occasions.

6 Q Okay. Let's change the subject a little. Have you
7 heard of a gang called the Black Angels?

8 A Yes.

9 Q At some time during the years when Mr. Rivera
10 started hanging out at your home, did you learn that
11 Mr. Rivera had become a member of the Black Angels?

12 A Yes.

13 Q When you learned that Mr. Rivera became a member of
14 the Black Angels, did his behavior change around you when
15 he came to your house?

16 A Not at all.

17 Q Did he act disrespectful in any way?

18 A No.

19 Q Did you ever tell him he couldn't come around your
20 home after you learned he had become associated with the
21 Black Angels?

22 A No.

23 Q Why not?

24 A Pardon?

25 Q Why didn't you tell him he couldn't come around

1 anymore?

2 A Because he is my son to me. I love him. I am not
3 going to chase him out of my house.

4 Q Did you criticize him for doing anything to his
5 body?

6 A Yes, I did.

7 Q What did you do?

8 A I scold him for putting Black Angels on him in a
9 tattoo.

10 Q There is an individual named David Navarro who has
11 also testified in this case. Do you know who David
12 Navarro is?

13 A I seen him.

14 Q Has Mr. Navarro ever come to your house looking for
15 your son Raul Prieto?

16 A No.

17 Q Did any of Mr. Rivera's friends come to your house
18 looking for your son Raul Prieto when Rivera wasn't
19 there?

20 A No.

21 Q About how many times would you say Mr. Navarro has
22 been to your house?

23 A About two or three.

24 Q So not very often?

25 A No.

1 Q Did many of your sons' other friends spend much
2 time at your house on E Street?

3 A Yes.

4 Q I am going to change the subject again slightly.
5 Do you know what KMR is?

6 A Yes.

7 Q Do you consider your son a graffiti artist?

8 A Yes, I do.

9 Q When did your son first get involved in art and
10 drawing?

11 A At a young age in elementary school.

12 Q Have you seen some of the graffiti murals he has
13 painted?

14 A Yes, I have.

15 Q Has he painted the symbol in your house?

16 A All over the place, yes.

17 Q Has he painted the graffiti symbol Crook, his name,
18 in your house?

19 A Yes.

20 Q Did Ontario police know about Raul being a member
21 of KMR?

22 A Yes, they did.

23 Q Were you ever at -- were you at your home in
24 September of 2008 when police searched your home?

25 A Yes, I was.

1 Q And did the police have a search warrant for KMR,
2 KMR-related graffiti?

3 A Yes.

4 MS. EL-AMAMY: Objection. Calls for hearsay.

5 Q BY MR. CEPHAS: Did the police go into your home that
6 day

7 A Yes, they did. They took a --

8 MS. EL-AMAMY: Objection. Nonresponsive.

9 THE COURT: "Yes" or "no", did they go into your
10 home?

11 THE WITNESS: Yes, they did.

12 Q BY MR. CEPHAS: Did they see photos of -- excuse me.
13 Did they see graffiti of KMR painted on the walls?

14 A Yes, they did.

15 MS. EL-AMAMY: Objection. Lack of personal
16 knowledge.

17 THE COURT: Sustained.

18 Q BY MR. CEPHAS: You were there the day that the
19 police went into the home; correct?

20 A Yes, I was.

21 Q And did you follow them around part of the time?

22 A Part of it. Then they didn't let me the rest.

23 Q Did you actually see them entering rooms that had
24 graffiti of KMR painted on it?

25 A Yes, they did. They took pictures and they

1 collected everything and put it in a bag, all his markers
2 and paints and excess pictures that were around the
3 house, and they took them in.

4 Q Is there any way they could have gone into some of
5 these rooms and not seen the paintings of KMR on the
6 walls?

7 A No. They were all over.

8 Q Now, that day, did police also look into Raul's
9 vehicle?

10 A Yes, they did.

11 Q How did they get into -- did you see how they got
12 into the car?

13 A Yes, I did.

14 Q How did they get into the car?

15 A They broke the window, and they broke the handle
16 from the driver's side.

17 Q They didn't use a Slim Jim to open?

18 A No, they didn't.

19 Q Did they pay to fix it?

20 A No. They towed it away too. I had to take it out
21 of the impound.

22 Q Did that cost you any money?

23 A Yes, it did.

24 Q How much?

25 A Around 400, something.

1 Q Okay. Change the subject again. Did your son Raul
2 Prieto have any mental health issues or special needs
3 growing up?

4 A Yes, he did.

5 MS. EL-AMAMY: Objection. Relevance.

6 THE COURT: Overruled.

7 Q BY MR. CEPHAS: What are those -- what are the
8 special needs or condition --

9 THE COURT: Woah, woah. Wait. Wait. Wait.

10 (The following proceedings were held at sidebar
11 outside the presence of the jury:)

12 THE COURT: Are you going to assert some
13 diminished mental capacity defense?

14 MR. CEPHAS: No, I am not.

15 THE COURT: Okay. Then this is irrelevant.

16 MR. CEPHAS: May I make my record?

17 THE COURT: Yes.

18 MR. CEPHAS: What I am establishing is that
19 everyone in his circle of friends knew that he was --
20 knew that he was special needs. He didn't learn how to
21 read or write until he was 20 years old. He gets
22 confused when he is talking. He wasn't gang material.

23 That is one of the reasons why -- excuse me,
24 your Honor. This is one of the reasons why, although
25 one of his best friends, Rivera, was president of OVS, at

1 the time he never brought him into the gang and why he
2 protected him because he was a special ed kid who, you
3 know, this is the kid who got confused. He had trouble
4 talking.

5 And it is not a diminished capacity, but it is
6 why for years for so many years his best friends never
7 brought him into this, you know, sophisticated, dangerous
8 organization because he just he wasn't up to it. He
9 wasn't gang material.

10 THE COURT: All right. We have had David Navarro
11 on the stand really for quite some time, and as the
12 leader of this gang, he didn't talk about being a Phi
13 Beta Kappa as being a qualifier in order to get into the
14 Black Angels. He never talked about that at all.

15 MR. CEPHAS: That's right, your Honor, but that is
16 irrelevant. This is my case -- excuse me, your Honor.

17 THE COURT: How is it irrelevant when this is --
18 okay. If it was irrelevant then to show what the
19 qualifications were to get into the Black Angels, then
20 this line of questioning is irrelevant.

21 MR. CEPHAS: No. No. I am saying I had no
22 obligation to ask Mr. Navarro --

23 THE COURT: True.

24 MR. CEPHAS: -- about the qualifications. I am
25 not saying that. What I am saying is that Mr. Rivera was

1 more protective of Prieto and kept him -- Navarro said
2 that Rivera kept him out, he was protective of him and
3 that he kept him out of gang business. And I am going to
4 explain to the jury the reason he did that, and the
5 reason he did that is because he was a special needs kid.
6 Everybody made fun of him. Even Rivera made fun of
7 Prieto.

8 THE COURT: You can't get that from this witness.

9 MS. EL-AMAMY: And for the record I would like to
10 say there is no expert notice and this witness has lack
11 of personal knowledge.

12 THE COURT: This is a waste of time.

13 MR. CEPHAS: Your Honor, I have approximately
14 five more questions then I am done.

15 THE COURT: Okay. If you are going to get into
16 his mental health, his mental status with this witness.

17 MR. CEPHAS: I am not, your Honor.

18 THE COURT: Okay. Good.

19 MR. CEPHAS: I am just -- my point is just that
20 she can testify he was in special ed classes his whole
21 life.

22 THE COURT: Not relevant.

23 MR. CEPHAS: It is relevant, your Honor.

24 THE COURT: I disagree.

25 MR. CEPHAS: You are cutting in my case.

1 THE COURT: It is not relevant, and I have just
2 explained why. You haven't established that mental
3 capacity is relevant in order to gain membership into the
4 Black Angels.

5 MR. CEPHAS: Your Honor, that is not -- my
6 argument is not that it is relevant, that it is not
7 required to -- that it is required to get into. It is
8 establishing my defense as to why Rivera didn't bring him
9 in. Not that he couldn't come in. If Rivera didn't
10 know --

11 THE COURT: She doesn't know that. Who is going
12 to testify regarding why Rivera did this, that or the
13 other?

14 MR. CEPHAS: Your Honor, it is -- I am allowed to
15 argue reasonable, reasonable conclusions in my closing,
16 and part of it is based on the fact that everyone who
17 spent time with Prieto knew that he couldn't read,
18 couldn't write, he was special needs, he went to special
19 ed classes, and they were protective of him for that
20 reason.

21 THE COURT: You can argue that, but there is no
22 evidence of that.

23 MR. CEPHAS: I am trying to get the evidence in so
24 that I can argue it, and I have like three or for
25 four more questions.

1 THE COURT: Okay. All right.

2 MR. CEPHAS: And that is it.

3 THE COURT: We will see.

4 MR. CEPHAS: Thank you, your Honor.

5 (The following proceedings were held in the
6 presence of the jury:)

7 Q BY MR. CEPHAS: During Mr. Prieto's school years did
8 he attend special ed classes?

9 A Yes, he did.

10 Q And did everyone in the family know that he
11 attended these special ed classes?

12 A Everybody knew, yes.

13 Q Did all of Mr. Prieto's friends know?

14 MS. EL-AMAMY: Objection. Personal knowledge.

15 THE COURT: Sustained.

16 Q BY MR. CEPHAS: During the years Raul was growing up,
17 did you see his friends making fun of Mr. Prieto because
18 of his special needs?

19 MS. EL-AMAMY: Objection. Relevance.

20 THE WITNESS: Yes, they did.

21 THE COURT: Overruled.

22 THE WITNESS: Yes, they did because he couldn't
23 read or write, spell. So they would laugh at him because
24 he was like almost 20 when he learned to read a little
25 and spell.

1 Q BY MR. CEPHAS: He was 20 years old by the time he
2 learned how to read and write?

3 A Yes.

4 MR. CEPHAS: Nothing further.

5

6 CROSS-EXAMINATION

7 BY MS. EL-AMAMY:

8 Q Good morning, Ms. Prieto.

9 A Good morning.

10 Q Now, you testified that -- you have been in court
11 this entire trial, haven't you?

12 A Yes.

13 Q So you have listened to a lot of calls, haven't
14 you?

15 A Yes.

16 Q So in listening to calls, you know that defendant
17 Rivera refers to you as his aunt; isn't that right?

18 A Yes.

19 Q Now, you said that you considered your son a
20 tagger; is that correct?

21 A Yes.

22 Q All right. Do you also consider your son a drug
23 dealer?

24 A No, I don't.

25 Q Were you here in trial listening to calls about

1 drugs?

2 A Yes.

3 Q So you heard a call where defendant -- your son is
4 talking to defendant Rivera about getting drugs; right?

5 A Yes.

6 Q They were talking about methamphetamine; right?

7 A Yes.

8 Q And your son asked for half an ounce; is that
9 correct?

10 A No.

11 Q You didn't hear that call?

12 A I heard my son desperate on the phone, and I heard
13 him being offered. Yeah.

14 Q You heard your son desperate on the phone. Did you
15 also hear your son volunteer to call a drug customer and
16 get money for defendant Rivera?

17 A No. I didn't hear that part.

18 Q You didn't hear that part?

19 A That part, I didn't.

20 Q So let me direct your attention to a portion of
21 Exhibit 85 which was a telephone call. That telephone
22 call was played while you were in court; isn't that
23 right?

24 A I don't have my glasses on me. Let me --

25 A Okay.

1 Q Did you read that?

2 A Yeah. But that day in court, I guess I didn't pay
3 attention to that section because, no, I didn't remember
4 that.

5 Q Okay. Well, now, looking at that, you see that
6 your son is saying let me get his number and I will call
7 from another phone; isn't that right?

8 A Yes. That is what it says.

9 Q And he is offering to get drug money for defendant
10 Rivera?

11 MR. CEPHAS: Objection. Speculation. Foundation.

12 THE COURT: Sustained.

13 Q BY MS. EL-AMAMY: Now, you were also there when this
14 portion of the call was played; isn't that right?

15 A Yeah.

16 Q And you were there when you heard your son say in a
17 recorded telephone conversation sell me half an O, I will
18 fucking move it; isn't that right?

19 A Yes.

20 Q And that was moving drugs?

21 MR. CEPHAS: Objection. Speculation.

22 THE WITNESS: Yes. But you asked me if I knew
23 my --

24 THE COURT: Hang on.

25 THE COURT: Say it again, Mr. Cephas?

1 MR. CEPHAS: Objection. Speculation, foundation
2 and hearsay.

3 THE COURT: Sustained.

4 Q BY MS. EL-AMAMY: Do you consider your son a robber?

5 A No.

6 Q All right. Well, were you there in court when your
7 son said in a recorded telephone conversation I am going
8 to hit a lick, I got a robbery I want to do?

9 A My son talks a lot of smack, but a robber he is
10 not. Even though he said it, but he is not a robber.

11 Q So he was just talking smack when defendant Rivera
12 said don't do that robbery, I am going to give you drugs
13 to sell instead?

14 A He was just talking smack. That is like me saying
15 I am going to knock the hell out of somebody. I am just
16 saying. And that is what he does. He talks smack.

17 Q Now, you have --

18 A He is not a robber. No.

19 Q He is not a robber?

20 A He has never robbed anybody. I have seen him help
21 too many people, you know, bring in homeless and feed
22 them and stuff than to be robbing. No.

23 Q Well, we just talked about how the cops broke into
24 a car that you owned; isn't that right?

25 A Yes.

1 Q And the reason why they broke into the car is
2 because your son stole a scooter from an individual?

3 MR. CEPHAS: Objection. Speculation foundation.

4 THE COURT: Overruled.

5 THE WITNESS: No. He didn't steal the scooter.
6 He had a part of the scooter, but he didn't steal the
7 scooter. And the day they broke that car, it had nothing
8 to do with the scooter.

9 Q BY MS. EL-AMAMY: So he stole a part of a scooter?

10 A No. He winded up stuck with it.

11 Q He winded up stuck with it because somebody else
12 stole it?

13 MR. CEPHAS: Objection. Speculation. Foundation.

14 THE COURT: Overruled.

15 THE WITNESS: He got -- does overruled mean to
16 answer?

17 THE COURT: Yes. Go ahead.

18 THE WITNESS: He got hit in the head with a
19 scooter, and when he went to, you know, pull the scooter
20 away from the kid, he winded up left with that part which
21 was the top of the -- a Razor scooter, like a \$50
22 scooter. They put it down as a \$400 scooter, but that
23 was not in that car. That was in another car. You got
24 the wrong car.

25 Q BY MS. EL-AMAMY: All right. But they took the

1 scooter from the kid?

2 A No. The scooter was thrown there. The little part
3 is the only thing he had, the handle.

4 MR. CEPHAS: Objection. Speculation, foundation.
5 They are talking about two different incidents.

6 THE WITNESS: Exactly. Oh. I'm sorry. I'm
7 sorry, Judge. Taking over your job. Sorry.

8 Q BY MS. EL-AMAMY: Now, your son, you were here when
9 you -- you know that your son sold cocaine; right?

10 A No.

11 Q You didn't -- you weren't in court when you heard
12 recorded conversations about your son selling cocaine?

13 A I heard the message, but did I know, no.

14 Q So he was talking to defendant Rivera about soda.
15 That is cocaine.

16 MR. WALSH: Objection. Speculation. Relevance.

17 THE COURT: Overruled.

18 THE WITNESS: Do I answer?

19 THE COURT: Yes.

20 THE WITNESS: You asked me if I knew my son was
21 selling cocaine. I said no which is the truth. What I
22 heard on the tape was, you know, that was true that I
23 heard here. But did I know, no.

24 Q BY MS. EL-AMAMY: And you also heard that your son
25 sold ecstasy?

1 A On the tape, yes.

2 Q Let me ask you again do you believe your son is a
3 drug dealer?

4 A No.

5 Q Now, you are the person who owned the house on
6 Campus and E; isn't that right?

7 A Yes.

8 Q And you let defendant Rivera do a gun deal there,
9 didn't you?

10 MR. CEPHAS: Objection. Speculation. Foundation.
11 Argumentative.

12 THE COURT: You can rephrase that question.

13 Q BY MS. EL-AMAMY: Did a gun deal happen at your
14 house?

15 MR. CEPHAS: Objection. Speculation.

16 THE COURT: Overruled.

17 Q BY MS. EL-AMAMY: Did a gun deal happen at your
18 house?

19 MR. CEPHAS: Objection. Foundation.

20 THE COURT: Overruled.

21 THE WITNESS: Does that mean answer?

22 THE COURT: Yes. Please.

23 THE WITNESS: Yeah. I heard here, but that day, I
24 didn't see no gun.

25 MR. CEPHAS: Objection, your Honor. Hearsay. She

1 just said she heard it here.

2 THE WITNESS: I heard it here.

3 THE COURT: Okay.

4 Q BY MS. EL-AMAMY: You heard it here?

5 A Well, I heard it behind the trial, the case.

6 Q Okay.

7 THE COURT: Would you please get clarification
8 from her as to whether or not her knowledge regarding
9 this transaction was her personal knowledge or whether or
10 not she acquired this information elsewhere?

11 Q BY MS. EL-AMAMY: Were you there in July of 2009 when
12 a bunch of cops came to your house?

13 A I don't know if that was the date, but I was there,
14 yes.

15 Q Were you there when defendant Rivera ran into the
16 house when the cops came?

17 A Defendant Rivera did not run into the house. He
18 walked into the house. Yes.

19 Q So walked into the house. And were you in the
20 house, or were you outside the house when that happened?

21 A As a matter of fact, I got in front of him because
22 I was afraid the cops would shoot him because they had
23 guns and rifles on the little kids and everybody. So he
24 passed me. I got in front of him.

25 Q Did you think he was doing something wrong?

1 A No, I didn't.

2 Q So why did you get in front of him?

3 A Because the cops are trigger happy, and I was
4 afraid they would hurt him.

5 Q Did you know he had -- did you know that he had
6 bought a gun on that date?

7 A No.

8 Q So you didn't know that he hid the gun in your
9 refrigerator?

10 A No.

11 Q Did you tell him -- so you didn't know at all?

12 A No, I didn't. And the officers, I asked to speak
13 to the officers, and they never even gave me a search
14 warrant or even told me that a gun was taken out of my
15 house because I kept asking them, you know, where is the
16 search warrant if you are going in my house.

17 And they never showed me nothing. They never
18 said nothing. They had us across the street, and they
19 had rifles on -- like I said a four-year-old and a
20 six-year-old and on everybody and the dogs too. But they
21 never told me why they were in my house or anything
22 except one officer said, oh, we saw somebody run in here.
23 Nobody ran in. I had a fence.

24 Q Now, this isn't the first time you have talked
25 about guns in this case have you?

1 A On this case? Yeah. Right now.

2 Q Well, you have been to hearings in this trial, in
3 this proceeding before; isn't that right?

4 MR. CEPHAS: Objection. Relevance.

5 THE WITNESS: No.

6 Q BY MS. EL-AMAMY: No, you have never been to court in
7 relation to your son in this case?

8 A All the times, I have been here.

9 THE COURT: If there is going to be impeachment,
10 there is a way of doing it.

11 Q BY MS. EL-AMAMY: You let your son --

12 A Oh. It dawned on me. Okay.

13 Q Would you like to correct your answer?

14 A Are you talking about the bail hearing?

15 Q Yes.

16 A Okay. That is different.

17 Q Yes. So you have been to court before?

18 A I have been to a bail hearing.

19 Q Have you filed a declaration before?

20 A What is that?

21 Q Where you said some things in an affidavit?

22 A Did I file it?

23 Q Did you sign an affidavit on behalf of your son?

24 A To get him out on bail. Yes.

25 Q Did you claim responsibility for some guns?

1 MR. CEPHAS: Objection. Relevance. Outside the
2 scope.

3 THE COURT: Sustained.

4 THE WITNESS: Does that mean answer?

5 MS. EL-AMAMY: No.

6 Q Now, you let your son and defendant Rivera use your
7 house as a place to conduct crimes; isn't that right?

8 A No. That is wrong.

9 Q Well, you testified earlier that you had KMR
10 graffiti all over your house?

11 A And if you would have asked me if I had any
12 drawings, I would have told you I had drawings there too
13 because I draw also. And I don't call it graffiti when
14 they are -- I draw Bambi. I like cartooning. He likes
15 skeletons. That is not graffiti. That is his personal
16 room. He can put up what he wants to on his walls. I
17 can do the same in mine. That is not letting my house
18 out for, you know, however you are putting it out there.

19 Q Did you just testify that you had KMR all over your
20 house?

21 A KMR because I will explain that one.

22 Q No. That is okay.

23 A He was on my room --

24 Q That is okay. Did you testify --

25 A Yes.

1 Q That you had KMR all over your house?

2 Ms. Prieto, you knew your son was conducting
3 drug deals out of your house, didn't you?

4 A No, I didn't.

5 Q You knew that Mr. Rivera was conducting drug deals
6 out of your house?

7 A No, I didn't.

8 Q You knew that he was getting guns and storing them
9 in your house?

10 A No, they weren't.

11 Q And you did that because you didn't want Mr. Rivera
12 to get in trouble; isn't that right?

13 A No. You are wrong.

14 Q Because he was like your son?

15 A Being my son and doing are two different things.

16 No, they were not. To my knowledge or anything, no, and
17 there was no guns in that house except mine and they were
18 legal.

19 Q There was never a gun in your house that belonged
20 to Mr. Rivera?

21 A I have never seen it until this date till I came to
22 court.

23 Q Now you know that there was one?

24 A Now I know that there was a gun that existed.

25 MS. EL-AMAMY: No further questions.

1 THE COURT: Redirect?

2 MR. CEPHAS: Nothing, your Honor.

3 THE COURT: You may step down, Ma'am. Thank you.

4 Your next witness. Well, there is only
5 one left.

6 MR. CEPHAS: Defense calls Steve Walton.

7 (The witness was sworn.)

8 THE CLERK: Please be seated.

9 Please state and spell your name for the
10 record.

11 THE WITNESS: Steve Walton, W-A-L-T-O-N.

12

13 DIRECT EXAMINATION

14 BY MR. CEPHAS:

15 Q Good morning.

16 A Morning, Sir.

17 Q Who do you work for?

18 A City of Ontario.

19 Q And are you what is referred to as a case agent?

20 A Yes, sir.

21 Q And just so the jury understands, you sort of have
22 responsibility to oversee, oversee the case?

23 A Yes.

24 Q You assist the prosecutors putting the evidence
25 together and preparing for trial?

1 A Yes.

2 Q And are you familiar with an officer named Brice
3 Devey?

4 A Yes.

5 Q And Mr. Devey testified last week in this case;
6 correct?

7 A Yes.

8 Q And he was assigned to the Ontario Police
9 Department gang unit; is that correct?

10 A Yes.

11 Q And at one point, in fact, he was going to testify
12 as a gang expert in this case; isn't that correct?

13 MR. DORE: Objection, your Honor. Relevance.

14 THE COURT: Overruled.

15 THE WITNESS: I am not sure if he was going to act
16 in that capacity on this case.

17 Q BY MR. CEPHAS: You heard testimony from David
18 Navarro last week in this courtroom; correct?

19 A Yes.

20 Q And during that testimony of Mr. Navarro, he spoke
21 about a list of graffiti in San Bernardino jail that had
22 several names including the name Crook.

23 Do you recall that testimony?

24 A Yes.

25 Q And do you recall he talked about it being what he

1 referred to as a roll call?

2 A Yes.

3 Q And I believe he testified that Raul Prieto is the
4 only Crook affiliated with Black Angels that he knew of;
5 is that correct? Something to that effect?

6 A Yes.

7 Q And he testified that since the name Crook was up
8 there that Mr. Prieto must have been promoted to full
9 Black Angels. He said something along that line;
10 correct?

11 A Yes.

12 Q And you were here when he gave that testimony;
13 correct?

14 A Yes.

15 Q Now, yesterday, did you receive an e-mail from me
16 asking you to find records for an individual named Samuel
17 Solorio who also used an alias Crook?

18 MR. DORE: Objection, your Honor. Evidence not --
19 lack of foundation.

20 THE COURT: Sustained.

21 Q BY MR. CEPHAS: Did you make some efforts yesterday
22 to obtain records for another individual who may or may
23 not use the moniker Crook?

24 MR. DORE: Objection, your Honor. Argumentative.

25 THE COURT: Overruled.

1 THE WITNESS: Yes.

2 Q BY MR. CEPHAS: And was this individual named Samuel
3 Solorio?

4 A Yes.

5 Q And did you obtain any records relating to Samuel
6 Solorio?

7 A Yes.

8 MR. CEPHAS: May I approach with two defense
9 exhibits, your Honor.

10 THE COURT: Who is this person, and how is it
11 suddenly relevant?

12 MR. CEPHAS: This person, Samuel Solorio --

13 THE COURT: No. Get that from -- not from me.
14 Get it from the witness.

15 MR. CEPHAS: I am going to. That is why I want to
16 approach with the exhibits, your Honor.

17 THE COURT: Did you get the exhibits from him,
18 from the witness?

19 MR. CEPHAS: I believe he was responsible for
20 obtaining these exhibits yesterday.

21 THE COURT: Okay. So I assume that he knows what
22 you are referring to. So let's find out from the witness
23 why this is important.

24 Q BY MR. CEPHAS: Did you obtain a Ontario Police
25 Department report yesterday related to Samuel Solorio?

1 A Yes.

2 Q And did you also obtain some kites related to
3 Samuel Solorio?

4 A No.

5 Q Did you obtain some copies of kites that you were
6 led to believe were in Samuel Solorio's possession?

7 A Yes.

8 Q And did you have a chance to look at those kites,
9 those notes, these kites?

10 A Yesterday, no.

11 Q You didn't look at them yesterday?

12 A No.

13 Q Did you look at them today?

14 A Yes.

15 Q And just to refresh the jury's recollection, kites,
16 they are jail house notes, something like that; correct?

17 A Yes.

18 Q And these kites that you reviewed, they referred to
19 Crook; correct?

20 A One of them.

21 Q At least one of them referred to Crook, and you
22 were led to believe that these kites were in the
23 possession of Samuel Solorio; correct?

24 MR. DORE: Objection, your Honor. Hearsay.

25 MR. CEPHAS: Not offered for the truth, your

1 Honor.

2 THE COURT: We have to hurry up and get there. I
3 am still not following why any of this is relevant. So
4 if we can like advance this a little bit.

5 Q BY MR. CEPHAS: This individual named -- well, the
6 police report that you obtained from Ontario Police
7 Department indicated that these --

8 MR. DORE: Objection, your Honor. Hearsay.

9 MR. CEPHAS: Your Honor, it goes to bias and
10 potential Brady violation.

11 THE COURT: It is still hearsay. Overruled.

12 I'm sorry. Sustained.

13 Q BY MR. CEPHAS: Did you make any effort to talk to
14 Brice Devey since you obtained these kites?

15 A Yes.

16 Q And is it your understanding that Mr. Devey has
17 been in possession of these kites since at least October
18 of 2012?

19 A Yes.

20 Q And these are the kites that have the name Crook
21 related to Samuel Solorio on them; isn't that correct?

22 MR. DORE: Objection, your Honor. Misstates the
23 testimony.

24 THE COURT: Sustained.

25 Q BY MR. CEPHAS: Have you done anything to confirm or

1 refute that Samuel Solorio uses the moniker Crook?

2 A Yes.

3 Q What have you done?

4 A I had one of my assistants run a criminal history
5 report on Mr. Solorio. Based on my training and
6 experience, I have found the criminal histories do
7 sometimes indicate an individual's moniker. After review
8 of Mr. Solorio's criminal history that was run yesterday,
9 I did not see any moniker listed for that subject.

10 Q There were no monikers listed on there; correct?

11 A Yes.

12 Q Isn't that sort of unusual. Don't rap sheets
13 normally have monikers?

14 A Not normally. Sometimes.

15 Q The rap sheet did indicate that he had several
16 tattoos; isn't that correct?

17 A I don't recall. I did not look for that.

18 Q Would it refresh your recollection if you looked at
19 the rap sheet?

20 A I could look at it, but yesterday I wasn't looking
21 for tattoos. I was looking for a moniker.

22 Q Do you have it in front of you?

23 A No, I do not.

24 THE COURT: Can I just -- is the purpose of this
25 to show that there was someone else that goes by the

1 street name Crook?

2 THE WITNESS: There is someone else in the Black
3 Angels gang. One of the kites says Crook, Angelitos
4 Negros, and it was in the possession of Samuel Solorio.

5 THE COURT: Okay. Good. Here we are. That is
6 all we need; right? From this witness?

7 THE COURT: I think the point got lost.

8 MR. CEPHAS: Well, no, there is a second point
9 here, your Honor.

10 THE COURT: Okay. Let's go to the second point.

11 Q BY MR. CEPHAS: The rap sheet indicated he had tats;
12 correct?

13 A I don't know.

14 Q You did not obtain any of the underlying reports,
15 the underlying police reports that would indicate gang
16 membership, did you?

17 A I obtained one criminal report from Ontario Police
18 Department.

19 Q Okay. But the rap sheet had several arrests,
20 convictions on it; correct?

21 A Yes.

22 Q And each of those arrests, convictions, would have
23 police reports attached to them; correct? Police reports
24 that you could obtain; correct?

25 A Yes.

1 Q And if during those police reports, it was found
2 that Samuel Solorio was a gang member or he was being
3 charged as a gang member or being enhanced for gang
4 conduct, it would normally be somewhere on that police
5 report; correct?

6 A Yes.

7 Q But you didn't look at any of those reports, did
8 you?

9 A I looked at one report.

10 Q And that is the report that just says that the
11 kites were found on Samuel Solorio; correct?

12 A Yes, sir.

13 MR. DORE: Objection, your Honor. Hearsay.

14 Q BY MR. CEPHAS: Okay. Now, that report also
15 indicates that in October, Brice Devey, the government's
16 gang expert, was told about this; isn't that correct?

17 MR. DORE: Objection, your Honor.

18 THE COURT: Hang on. Hang on.

19 First, let the question come out.

20 MR. DORE: Your Honor, the question itself is
21 argumentative. And I apologize for interrupting, but I
22 believe that I won't do it again. I apologize.

23 THE COURT: Okay. Thank you. I need to hear the
24 question. Go ahead.

25 Q BY MR. CEPHAS: Now, the report that you did produce

1 also indicated that Brice Devey, gang unit officer, was
2 informed of the Samuel Solorio kites two months ago?

3 MR. DORE: Objection, your Honor. Hearsay.

4 MR. CEPHAS: Goes to bias, your Honor.

5 This is the government's witness.

6 THE COURT: I'm sorry. Objection sustained.

7 MR. CEPHAS: Nothing further.

8 THE COURT: Cross.

9

10 CROSS-EXAMINATION

11 BY MR. DORE:

12 Q Agent Walton, in that group of kites that you
13 reviewed today, were there some kites that were addressed
14 to someone going by a name that was not Crook?

15 MR. CEPHAS: Objection. Relevance.

16 THE COURT: Overruled.

17 THE WITNESS: Yes, I believe so.

18 Q BY MR. DORE: Do you recall the names of any
19 individuals to which any of those other kites were
20 addressed?

21 A Yes.

22 Q And can you tell the jury any of those names?

23 A On the one kite that had that made reference to
24 Crook, it was also, alongside Crook, it said and Junior
25 De, I believe it was. I can't remember the name, but it

1 was of another gang out of Los Angeles.

2 Q And do you recall the names of anyone else on any
3 of the other kites to which those kites were addressed?

4 A There were several names on the kites. I only
5 really remember one other one, and it was Pulga.

6 MR. DORE: No further questions.

7 MR. CEPHAS: Your Honor, I would request a
8 continuance so that I could obtain the presence of
9 Officer Devey to follow-up on this Crook issue.

10 THE COURT: Okay. This Solorio person, did you
11 run across any information which identified him as being
12 a member of the Black Angels?

13 THE WITNESS: Yes, sir.

14 THE COURT: You did?

15 THE WITNESS: Yes.

16 THE COURT: Did that same information also
17 identify him by the street name Crook?

18 THE WITNESS: No.

19 THE COURT: Okay. Thank you.

20 Anything further? Anything further,
21 Mr. Cephas?

22 MR. CEPHAS: I want to follow-up on what he just
23 said.

24

25 REDIRECT EXAMINATION

1 BY MR. CEPHAS:

2 Q These documents were produced last night --
3 correct -- the documents with the kites with Crook's name
4 on them?

5 MR. DORE: Objection, your Honor. Lack of
6 foundation.

7 MR. CEPHAS: Let me change it, your Honor. Okay.

8 Q You just said that you are not aware of any
9 evidence that indicates Solorio is Crook; is that
10 correct?

11 A That is correct.

12 Q But it is your understanding that Solorio had a
13 kite addressed to Crook on his possession; correct?

14 A Yes.

15 Q And you wouldn't -- you don't believe that evidence
16 is related to Solorio being Crook?

17 A No.

18 Q And you didn't do anything else -- you didn't get
19 the police reports that might force you to let the jury
20 know there is another Crook named Samuel Solorio, did
21 you?

22 A No.

23 MR. CEPHAS: Thank you. Nothing further.

24 MR. DORE: Just one question, your Honor.

25 RECROSS-EXAMINATION

1 BY MR. DORE:

2 Q Just want to make sure, Special Agent Walton, when
3 you got that e-mail from defense counsel about
4 Mr. Solorio, what day did you receive it?

5 A Yesterday.

6 Q And does it typically take you longer than a day to
7 get police reports?

8 A Yes.

9 MR. DORE: No further questions.

10 THE COURT: All right, Sir. You may step down.

11 All right. Any additional witnesses?

12 MR. CEPHAS: No, your Honor. Mr. Prieto rests.

13 THE COURT: All right.

14 Ms. Medina?

15 MR. WALSH: Ms. Medina rests, your Honor.

16 THE COURT: Mr. Navarro.

17 MR. NAVARRO: Mr. Navarro rests, your Honor.

18 THE COURT: All right. Ladies and gentlemen,
19 unless -- ladies and gentlemen, that concludes the
20 presentation of evidence in this case. We are going to
21 take a break, and when we come back, I am going to read
22 you a lot of jury instructions.

23 And then we are going to have closing
24 arguments of the attorneys, and then the case will be
25 submitted to you for decision. We are practically there.

1 Request for a continuance in the trial is
2 denied. I'm sorry. I forgot to rule on that.

3 All right. Please remember the admonition.
4 We are almost home. All right.

5 (The following proceedings were held outside the
6 presence of the jury:)

7 THE COURT: I got the verdict forms. I think we
8 had indicated long ago we weren't going to send the
9 indictment in so how are they going to be able to
10 identify Racketeering Act No. 6?

11 MS. EL-AMAMY: I believe that it will be
12 identified in the jury instruction.

13 THE COURT: Okay. You are going to go over this,
14 the how to?

15 MS. EL-AMAMY: Exactly.

16 THE COURT: All right. Now, one other thing --
17 this doesn't have to be on the record.

18 MR. CEPHAS: Your Honor, I would like to keep on
19 the record. I just want to let the court know. I just
20 want to preserve for appeal my earlier objection with
21 respect to special instructions being used. I had -- I
22 filed it last week.

23 THE COURT: Filed it, being what?

24 MR. CEPHAS: I filed an objection to not using the
25 general conspiracy instruction and modifying it for Count

1 1, and then also I have an objection to Count -- to the
2 Count 5 instruction not being complete, not using a full
3 version of the Ninth Circuit model rule. The parties are
4 otherwise in agreement. I just want to preserve it for
5 appeal.

6 THE COURT: Okay. I don't know what you are
7 talking about. I know we had a meeting of counsel. You
8 didn't attend. And we went over each jury instruction,
9 instruction by instruction. Are you saying you filed
10 something last week?

11 MR. CEPHAS: Yes.

12 THE COURT: And this is after we had all agreed on
13 the jury instructions?

14 MR. CEPHAS: No. It was before. It was before,
15 and I gave it to defense counsel to make sure they had a
16 copy prior to the meeting and asked them to preserve my
17 position. The government was aware of it, and we have
18 had discussions since then. We can't come to agreement.
19 There have been some modifications to the jury
20 instructions that I agree with, but I -- it is still my
21 position that the instruction --

22 THE COURT: Specifically, which instruction?

23 MR. CEPHAS: 35, I believe, your Honor. It should
24 be the instruction for Count 1.

25 THE COURT: All right. You are right.

1 MR. CEPHAS: And I believe 39.

2 THE COURT: Okay. Hang on. Let's just deal with
3 one at a time.

4 THE COURT: Specifically, what is your complaint
5 with Instruction 35?

6 MR. CEPHAS: Specifically, your Honor, it is
7 not -- it does not contain much of the language in the
8 model instruction that is also in the proposed
9 instructions at Instruction No. 29. And there is a --
10 there is a short reference in 25 saying that you are also
11 to consider earlier conspiracy instructions, but it
12 doesn't say which one. It doesn't point to Instruction
13 29 or 30, and my concern is that the jury may decide the
14 case with respect to my client by looking just at 35 and
15 not also considering 29 and 30 at the same time.

16 THE COURT: All right. Let me make sure I
17 understand you. Your objection to 35 is that it does not
18 include certain information that you agree is covered in
19 29 or 25?

20 MR. CEPHAS: And 29 and --

21 THE COURT: That is "yes" or "no".

22 MR. CEPHAS: And 30 and 31, I believe, at a
23 minimum, 35 should specifically refer to 29, 30 and 31,
24 but I also believe 35 should have just been the model
25 rule.

1 THE COURT: Okay. You didn't answer my question.
2 My question is are you saying that whatever it is that
3 you feel is lacking in 35 is covered in other
4 instructions?

5 MR. CEPHAS: Yes.

6 THE COURT: Okay. That was painful trying to get
7 that out, wasn't it. All right. Let's move on to
8 another -- I think that is sufficient. As long as these
9 points of law are covered in other instructions.

10 I need estimates in terms of your closings.

11 MR. DORE: Your Honor, for the government, it
12 would probably be an hour and 15 minutes.

13 THE COURT: That is what you think. All right.
14 Mr. Cephas.

15 MR. CEPHAS: 30 minutes, your Honor.

16 THE COURT: Mr. Navarro?

17 THE WITNESS: No more than 30 minutes, your Honor.

18 THE COURT: Mr. Walsh?

19 MR. WALSH: 40 minutes, your Honor.

20 THE COURT: What.

21 MR. WALSH: 40 minutes, your Honor.

22 THE COURT: No. The government, you are going to
23 be limited to one hour. 30, 30, 30 will be sufficient.
24 All right.

25 MR. CEPHAS: Your Honor, the government -- is that

1 including their rebuttal time?

2 THE COURT: Yeah. Wait. No. No. It does not.

3 And I assume that the government is also going to explain
4 how to fill out the verdict forms; correct?

5 MS. EL-AMAMY: In its rebuttal it will, your
6 Honor.

7 THE COURT: Okay. Good. All right. And the
8 rebuttal will be a rebuttal.

9 MS. EL-AMAMY: Yes, your Honor.

10 MR. CEPHAS: Can I ask how much time they have for
11 rebuttal?

12 THE COURT: I don't know if they will have
13 anything to rebut.

14 MR. DORE: Sorry, your Honor. Will the court
15 notify the government during its close as to when it has
16 a certain amount of time left?

17 THE COURT: I will do that.

18 MR. WALSH: Your Honor, can we renew the Rule 29
19 motions? I think they have to be renewed at the close of
20 the evidence in order to preserve the issues. So I think
21 all defendants move again for judgment of acquittal under
22 Rule 29 for insufficient evidence.

23 THE COURT: Okay.

24 MR. CEPHAS: Yes. I also do.

25 MR. NAVARRO: Yes, your Honor, for Mr. Rivera.

1 THE COURT: Certainly, nothing has changed during
2 the presentation of the defense case. The motions are
3 denied. All right. Let's take a break.

4 (Recess from 9:26 to 9:51 a.m.)

5 THE COURT: I want to quickly go on the record
6 before the jury gets in about the special verdict forms.

7 MR. CEPHAS: And, your Honor, we did have -- we
8 did have a question. We were unclear as to whether the
9 court still wanted to make additional changes to the
10 verdict form to be more specific on the statutes or
11 something like that.

12 THE COURT: Yeah. I really do. What apparently
13 is called for here is that the jury refer to 50 some odd
14 pages of jury instructions in order to find the overt
15 acts that they are to reach agreement on.

16 This really leaves a lot of room for error,
17 and it troubles me. The other thing is that I would like
18 to add under each count description something other than
19 the code section. I would like a verbal description to
20 trigger in their mind what it is that they are actually
21 answering. Okay.

22 THE COURT: We can talk about that. Those will be
23 clarifications not substantive changes to the form. So
24 you can instruct on how to complete the form.

25 (The following proceedings were held in the

1 presence of the jury:)

2 THE COURT: All right.

3 Members of the jury, now that you have heard
4 all of the evidence, it is my duty to instruct you on the
5 law that applies to this case. A copy or several copies
6 of these instructions will be available in the jury room
7 for you to consult.

8 It is your duty to weigh and to evaluate all
9 the evidence received in the case and in that process to
10 decide the facts. It is also your duty to apply the law
11 as I give it to you to the facts as you find them whether
12 you agree with the law or not. You must decide the case
13 solely on the evidence and the law and must not be
14 influenced by any personal likes or dislikes, opinions,
15 prejudices or sympathy. You will recall that you took an
16 oath promising to do so at the beginning of the case.

17 You must follow all these instructions and not
18 single out some and ignore others. They are all
19 important. Please do not read into these instructions or
20 into anything I may have said or done any suggestion as
21 to what verdict you should return. That is a matter
22 entirely up to you.

23 This is a criminal case brought by the United
24 States government. The charges against the defendants
25 are contained in the indictment. The indictment simply

1 describes the charges the government brings against the
2 defendants. The indictment is not evidence. It does not
3 prove anything. I will give you a general overview of
4 the indictment.

5 Only counts 1, 2, 5, 6, 10 and 23 are before
6 you. Count 2 charges defendants Carlos Rivera and
7 Jessica Medina and other alleged co-conspirators with a
8 violation of the Racketeer Influenced and Corrupt
9 Organization Act, also known as RICO, by allegedly
10 conducting or participating in the conduct of the affairs
11 of a racketeering organization alleged to be the Ontario
12 Black Angels. It includes a number of alleged
13 racketeering acts some of which are repeated later as
14 separate counts. Only Racketeering Acts 1, 6 and 7 are
15 before you.

16 Count 1 charges defendants Carlos Rivera,
17 Jessica Medina and Raul Prieto and other alleged
18 co-conspirators with conspiring to participate in the
19 affairs of a racketeering organization through a pattern
20 of racketeering activity.

21 Count 5 charges defendants Carlos Rivera,
22 Jessica Medina and Raul Prieto and other alleged
23 co-conspirators with conspiring to possess with intent to
24 distribute and to distribute controlled substances.

25 Count 6 charges defendant Carlos Rivera with

1 distributing a controlled substance.

2 Count 10 charges defendant Carlos Rivera and
3 Jessica Medina with possession with intent to distribute
4 a controlled substance.

5 Count 23 charges defendant Carlos Rivera with
6 being a felon in possession of a firearm and ammunition.

7 The defendants have pleaded not guilty to the
8 charges and are presumed innocent unless and until the
9 government proves the defendants guilty beyond a
10 reasonable doubt. In addition, the defendants have a
11 right to remain silent and never have to prove innocence
12 or to present any evidence. The government has the
13 burden of proving every element of the charges beyond a
14 reasonable doubt.

15 I instruct you that you must presume the
16 defendants to be innocent of the crimes charged. Thus,
17 the defendants, although accused of crimes in the
18 indictment, begin the trial with a clean slate with no
19 evidence against them. The indictment as you already
20 know is not evidence of any kind. The law permits
21 nothing but legal evidence presented before the jury in
22 court to be considered in support of any charge against
23 the defendant. The presumption of innocence alone,
24 therefore, is sufficient to acquit the defendants.

25 The burden is always upon the prosecution to

1 prove guilt beyond a reasonable doubt. This burden never
2 shifts to defendants for the law never imposes upon
3 defendants in a criminal case the burden or duty of
4 calling any witnesses or producing any evidence. The
5 defendants are not even obligated to produce any evidence
6 by cross-examining the witnesses for the government.

7 It is not required that the government prove
8 guilt beyond all possible doubt. The test is one of
9 reasonable doubt. A reasonable doubt is doubt based upon
10 reason and common sense, the kind of doubt that would
11 make a reasonable person hesitate to act. Proof beyond a
12 reasonable doubt must therefore be proof of such a
13 convincing character that a reasonable person would not
14 hesitate to rely or act upon it in the most important of
15 his or her own affairs.

16 Unless the government proves beyond a
17 reasonable doubt that a given defendant has committed
18 each and every element of the offense charged in the
19 indictment, you must find the defendant not guilty of the
20 offense. If the jury views the evidence in the case as
21 reasonably permitting either of two conclusions, one of
22 innocence and the other of guilty, the jury must, of
23 course, adopt the conclusion of innocence.

24 A defendant in a criminal case has a
25 constitutional right not to testify. You may not draw

1 any inference of any kind from the fact that a defendant
2 did not testify.

3 The evidence you are to consider in deciding
4 what the facts are consists of:

5 One, the sworn testimony of any witness;

6 Two, exhibits received in evidence;

7 And, three, any facts to which the parties
8 have agreed.

9 In reaching your verdict, you may only
10 consider the testimony and exhibits received in evidence.
11 The following things are not evidence and you may not
12 consider them in deciding what the facts are:

13 One, questions, statements, objections and
14 arguments by the lawyers are not evidence. The lawyers
15 are not witnesses. Although you must consider a lawyer's
16 questions in order to understand the answers of a
17 witness, the lawyer's questions are not evidence.

18 Similarly, what the lawyers have said in their opening
19 statements and will say during their closing arguments
20 and have said at other times is intended to help you
21 interpret the evidence but it is not evidence. If the
22 facts as you remember them differ from the way the
23 lawyers state them, your memory of them controls.

24 Two, any testimony that I have excluded,
25 stricken or instructed you to disregard is not evidence.

1 Three, anything you may have seen or heard
2 when court was not in session is not evidence. You are
3 to decide the case solely on the evidence received at the
4 trial.

5 Now, evidence may be direct or circumstantial.
6 Direct evidence is direct proof of a fact such as
7 testimony by a witness about what that witness personally
8 saw or heard or did. Circumstantial evidence is indirect
9 evidence. That is, it is proof of one or more facts from
10 which you can find another fact.

11 You are to consider both direct and
12 circumstantial evidence. Either can be used to prove any
13 fact. The law makes no distinction between the weight to
14 be given to either direct or circumstantial evidence. It
15 is for you to decide how much weight to give to any
16 evidence.

17 By way of example, if you wake up in the
18 morning and see that the sidewalk is wet, you may find
19 from that fact that it rained during the night. However,
20 other evidence, such as a turned-on garden hose may
21 provide an explanation for the water on the sidewalk.

22 Therefore, before you decide that a fact has
23 been proved by circumstantial evidence, you must consider
24 all of the evidence in light of reason, experience and
25 common sense.

1 In deciding the facts in this case, you may
2 have to decide which testimony to believe and which
3 testimony not to believe. You may believe everything a
4 witness says or part of it or none of it.

5 In considering the testimony of any witness,
6 you may take into account:

7 One, the witness's opportunity and ability to
8 see or hear or know the things testified to;

9 Two, the witness's memory;

10 Three, the witness's manner while testifying.

11 Four, the witness's interest in the outcome of the case,
12 if any;

13 Five, the witness's bias or prejudice, if any;

14 Six, whether other evidence contradicted the
15 witness's testimony.

16 Seven, the reasonableness of the witness's
17 testimony in light of all the evidence;

18 And, eight, any other factors that bear on
19 believability.

20 The weight of the evidence as to a fact does
21 not necessarily depend on the number of witnesses who
22 testify. What is important is how believable the
23 witnesses were and how much weight you think their
24 testimony deserves.

25 You have heard recordings in English that were

1 received in evidence. Transcripts of the recordings were
2 provided to help you identify speakers and to help you
3 decide what the speakers said. Remember that the
4 recordings themselves are the evidence, not the
5 transcripts. If you hear something different from what
6 appeared in any of the transcripts, what you heard is
7 controlling. The transcripts will not be available
8 during your deliberations.

9 You have heard recordings in the Spanish
10 language, transcripts of the recordings were admitted
11 into evidence. The transcripts were official English
12 language translations of the recordings.

13 Although some of you may know the Spanish
14 language, it is important that all jurors consider the
15 same evidence. Therefore, you must accept the English
16 translation contained in the transcript even if you would
17 translate it differently.

18 You have heard testimony of witnesses who --

19 You have heard testimony that the defendants
20 made out of court statements. It is for you to decide
21 whether the particular defendant made the statement and
22 if so how much weight to give it. In making those
23 decisions, you should consider all the evidence about the
24 statement including the circumstances under which the
25 defendant may have made it.

1 You have heard evidence that a particular
2 defendant has previously been convicted of a crime and
3 that the defendant has been on parole. With the
4 exception of your determination as to defendant Rivera's
5 guilt or innocence as to Count 23 of the indictment which
6 charges defendant Rivera with being a felon in possession
7 of a firearm, you may not consider a prior conviction or
8 parole status as evidence of guilt of the crimes for
9 which a particular defendant is now on trial. Similarly,
10 you may not consider any evidence that any particular
11 defendant has spent time in custody as evidence of guilt
12 of the crimes for which that defendant is now on trial.

13 You have heard testimony from a witness, David
14 Navarro, a cooperating witness.

15 Mr. Navarro hopes to receive favored treatment
16 from the government in connection with this case.

17 Mr. Navarro admitted being an accomplice to
18 one or more of the crimes charged. An accomplice is
19 one who voluntarily and intentionally joins with another
20 person in committing a crime.

21 This witness has plead guilty to a crime or
22 crimes arising out of the same events for which these
23 defendants are on trial. A cooperating witness's guilty
24 or guilty plea is not evidence against any of these
25 defendants, and you may consider it only in determining

1 Mr. Navarro's believability.

2 Because of the status of Mr. Navarro as a
3 cooperating witness, in evaluating his testimony, you
4 should consider the extent to which or whether his
5 testimony may have been influenced by any of these
6 factors. In addition, you should examine the testimony
7 plaintiff never with greater caution than that of other
8 witnesses.

9 You have heard testimony from persons who
10 because of education or experience were permitted to
11 state opinions and the reasons for their opinions.

12 Such opinion testimony should be judged like
13 any other testimony. You may accept it or reject it and
14 give it as much weight as you think it deserves
15 considering the witness's education and experience, the
16 reasons given for the opinions and all the other evidence
17 in the case.

18 You are here only to determine whether the
19 defendant is guilty or not guilty of the charges in the
20 indictment. The defendants are not on trial for any
21 conduct or offenses not charged in the indictment.

22 A separate crime is charged against one or
23 more of the defendants in each count. The charges have
24 been joined for trial. You must decide the case of each
25 defendant on each crime charged against that defendant

1 separately. Your verdict on any count as to any
2 defendant should not control your verdict on any other
3 count or as to any other defendant.

4 All the instructions apply to each defendant
5 and to each count unless a specific instruction states
6 that it applies only to a specific defendant or count.

7 I am about to begin explaining the law
8 pertaining to the charges in the indictment. Let me
9 advise you in advance, these instructions are lengthy,
10 especially as to Count 2, the RICO count. Although the
11 instructions are lengthy, they are also necessary.
12 Please be assured that we have made every effort to
13 shorten the instructions, simplify them and make them
14 more accessible to you. I am reading the instructions
15 now, but I will also provide you with a set of the
16 instructions to take with you and consult during your
17 deliberations. You will also be provided with a verdict
18 form for each defendant.

19 I will begin by giving you the instructions
20 for Count 2. My reason for doing so is that the
21 instructions for Count 2 are longer than for the other
22 counts in part because I will be defining and explaining
23 a number of terms and concepts relating to the
24 racketeering laws.

25 Many of these instructions will be applicable

1 to other counts of the indictment including Count 1 which
2 charges RICO conspiracy. Rather than repeating
3 instructions every time they may be applicable, I will
4 sometimes simply state that I have instructed you earlier
5 on the applicable law on that subject, and I will ask you
6 to apply those earlier instructions.

7 The indictment alleges that certain crimes
8 were committed on or about a certain date. Although it
9 is necessary for the government to prove beyond a
10 reasonable doubt that the charged crimes were committed
11 on a date reasonably near the particular date alleged in
12 the indictment, it is not necessary for the government to
13 prove that the crimes were committed precisely on the
14 date charged.

15 Defendants Carlos Rivera and Jessica Medina
16 are charged in Count 2 of the indictment with having
17 conducted or participated in the conduct of the affairs
18 of an enterprise through a pattern of racketeering
19 activity in violation of Title 18, United States Code,
20 Section 1962(c). This statute is commonly referred to as
21 the RICO statute.

22 Racketeering activity means the commission of
23 certain crimes. These crimes include acts involving
24 extortion in violation of California Penal Code Sections
25 31, 182 and 518 through 520; and distribution of

1 controlled substances, possession with intent to
2 distribute controlled substances and conspiracy to
3 distribute controlled substances including
4 methamphetamine and heroin in violation of Title 21,
5 United States Code, Sections 841(a)(1), 843(b) and 846.

6 In order for a defendant to be found guilty of
7 Count 2, the substantive RICO offense, the government
8 must prove each of the following elements beyond a
9 reasonable doubt:

10 One, there was an ongoing enterprise with some
11 sort of formal or informal framework for carrying out its
12 objectives consisting of a group of persons associated
13 together for a common purpose of engaging in a course of
14 conduct;

15 Two, the defendant was employed by or
16 associated with the enterprise;

17 Three, the defendant participated directly or
18 indirectly in the conduct of the affairs of the
19 enterprise through a pattern of racketeering activity or
20 collection of unlawful debt. To conduct or participate
21 means that the defendant had to be involved in the
22 operation or management of the enterprise;

23 And, four, the enterprise engaged in or its
24 activities in some way affected commerce between
25 one state and another state or between the United States

1 and a foreign government.

2 An enterprise need not be a formal entity such
3 as a corporation and need not have a name, regular
4 meetings or established rules.

5 As to Count 2, the first element the
6 government must prove is that the enterprise alleged in
7 the indictment, the Ontario Black Angels gang, existed.

8 As used in these instructions, the term
9 enterprise is any group of people who have associated
10 together for a common purpose of engaging in a conduct
11 over a period of time. This group of people, in addition
12 to having a common purpose, must have an ongoing
13 organization, either formal or informal. The personnel
14 of the enterprise, however, may change and need not be
15 associated with the enterprise for the entire period
16 alleged in the indictment. This group of people does not
17 have to be a legally recognized entity such as a
18 partnership or corporation. This group may be organized
19 for a legitimate and lawful purpose, or it may be
20 organized for an unlawful purpose. The name of the
21 organization itself is not an element of the offense and
22 does not have to be proved.

23 Therefore, the government must prove beyond a
24 reasonable doubt that the gang was a group of people
25 associated for a common purpose of engaging in a course

1 of conduct and that the association of these people would
2 not -- correction -- would be an ongoing or informal
3 organization. The government need not prove that the
4 enterprise would have any particular organized structure.

5 The second element that the government must
6 prove as to Count 2 is that defendants were employed by
7 or associated with the enterprise.

8 The term associated with should be given its
9 plain meaning. Associated means to be joined, often in a
10 loose relationship as a partner, fellow worker,
11 colleague, friend, companion or ally. Therefore, a
12 person is associated with an enterprise when, for
13 example, he or she joins with other members of the
14 enterprise and knowingly aids or furthers the activities
15 of the enterprise or he or she conducts business with or
16 through the enterprise. It is not required that a
17 defendant have a formal position in the enterprise,
18 participate in all of the activities of the enterprise,
19 or have full knowledge of all of the activities of the
20 enterprise. Rather, it is sufficient that the government
21 proves beyond a reasonable doubt that a defendant was
22 associated with the enterprise within the meaning of the
23 term as I have just explained it and that he or she knew
24 of the general nature of the enterprise and knew that the
25 enterprise would extend beyond his or her role in the

1 enterprise.

2 The third element that the government must
3 prove as to Count 2 is that the defendant conducted or
4 participated in the conduct of the affairs of the
5 enterprise through a pattern of racketeering activity.

6 In order for you to find that the defendant
7 participated directly or indirectly in the conduct of the
8 affairs of the enterprise, you must find that the
9 defendant participated in the operation or management of
10 the enterprise. This means that the defendant had some
11 part in directing the enterprise's affairs.

12 To find that a defendant participated in the
13 operation or management of the enterprise, it need not be
14 shown that the defendant exercised significant control
15 over or within the enterprise, that he or she held a
16 formal position in the enterprise or that he or she had
17 primary responsibility for the enterprise's affairs. An
18 enterprise is operated, not just by upper management but
19 also by lower rung participants in the enterprise who are
20 under the direction of upper management or who carry out
21 upper management's orders.

22 A pattern of racketeering activity as set
23 forth in the third element of Count 2 is at least
24 two racketeering acts that have a relationship to each
25 other and that amount to or pose a threat of continued

1 criminal activity. Conduct forms a pattern if it
2 consists of criminal acts that have the same or similar
3 purposes, results, participants, victims or methods of
4 commission or otherwise are interrelated by
5 distinguishing characteristics. Sporadic activity or
6 widely separated and isolated criminal activity does not
7 form a pattern of racketeering activity.

8 Two racketeering acts are not necessarily enough to
9 establish a pattern of racketeering activity.

10 Multiple racketeering acts are charged in
11 Count 2. However, only Racketeering Acts 1, 6 and 7 are
12 before you. These racketeering acts can be summarized as
13 including conspiracy to distribute narcotics,
14 distribution of methamphetamine and possession with
15 intent to distribute methamphetamine. I will describe
16 the elements of each of the charged racketeering acts in
17 a few moments. I instruct you at this time, however,
18 that you must be unanimous as to which racketeering acts
19 have been proved beyond a reasonable doubt before you may
20 find that the third element of the offense as described
21 in my previous instruction has been satisfied against
22 that defendant. In other words, there must be at least
23 two specific racketeering acts that all of you find were
24 committed by the defendant in order to convict a
25 defendant of Count 2.

1 You will receive a verdict form which has a
2 separate space for you to enter your findings as to each
3 defendant for the racketeering acts alleged in Count 2
4 with each defendant as charged. I will describe to you
5 in more detail the verdict form and the manner in which
6 you must complete it after I have completed instructing
7 you regarding the law you must apply to the case.

8 The fourth and final element which the
9 government must prove as to Count 2 is that the
10 enterprise itself or the racketeering activities of those
11 associated with it had some effect on interstate
12 commerce. Interstate commerce means commerce between
13 one state and another state or between the United States
14 and a foreign country. This effect on interstate
15 commerce could have occurred in any way, and it need only
16 have been minimal.

17 It is not necessary for you to find that
18 defendants themselves engaged in interstate commerce or
19 that they knew the enterprise was engaged in interstate
20 commerce. Nor is it necessary that the effect on
21 interstate commerce have been adverse to commerce. All
22 that is necessary is that the activities of the
23 enterprise affect interstate commerce in some minimal
24 way.

25 Racketeering Act 1 charges defendants Carlos

1 Rivera, Jessica Medina and others with conspiring to, A,
2 distribute methamphetamine and, B, distribute heroin all
3 in violation of Title 21, United States Code, Sections
4 841(a)(1), 841(b)(1)(a) and (b) and Section 846. In
5 order for a defendant to be found guilty of Racketeering
6 Act 1, the government must prove each of the following
7 elements beyond a reasonable doubt:

8 Beginning on a date unknown and continuing to
9 on or about April 7, 2010, there was an agreement between
10 two or more persons to either, A, distribute
11 methamphetamine or, B, distribute heroin;

12 And, two, the defendant became a member of a
13 conspiracy knowing of at least one of its objects and
14 intending to help accomplish it.

15 I will now explain to you the general law
16 regarding conspiracies. This instruction on the general
17 law regarding conspiracies applies not only to the
18 conspiracy charged in Racketeering Act 1 but also to the
19 conspiracies charged in Counts 1 and 5 of the indictment.

20 A conspiracy is a kind of criminal
21 partnership, an agreement of two or more persons to
22 commit one or more crimes. The crime of conspiracy is
23 the agreement to do something unlawful. It does not
24 matter whether the crime agreed upon was committed.

25 For a conspiracy to have existed, it is not

1 necessary that the conspirators made a formal agreement
2 or that they agreed on every detail of the conspiracy.
3 It is not enough, however, that they simply met,
4 discussed matters of common interest, acted in similar
5 ways or perhaps helped one another. You must find that
6 there was a plan to commit at least one of the crimes
7 alleged in the indictment as an object of the conspiracy
8 with all of you agreeing as to the particular crime which
9 the conspirators agreed to commit.

10 One becomes a member of a conspiracy by
11 willfully participating in the unlawful plan with the
12 intent to advance or further some object or purpose of
13 the conspiracy even though the person does not have full
14 knowledge of all the details of the conspiracy.
15 Furthermore, one who willfully joins an existing
16 conspiracy is as responsible for it as the originators.
17 On the other hand, one who has no knowledge of a
18 conspiracy but happens to act in a way which furthers
19 some object or purpose of a conspiracy does not thereby
20 become a conspirator. Similarly, a person does not
21 become a conspirator merely by associating with one or
22 more persons who are conspirators nor merely by knowing
23 that a conspiracy exists.

24 A conspiracy may continue for a long period of
25 time and may include the performance of many

1 transactions. It is not necessary that all members of
2 the conspiracy join it at the same time, or one may
3 become a member of a conspiracy without full knowledge of
4 all of the details of the unlawful scheme or the names,
5 identities or locations of all the other members. It i
6 not defense that a person's participation in a conspiracy
7 was minor or for a short time.

8 Even though a defendant did not directly
9 conspire with other conspirators in the overall scheme,
10 the defendant has in effect agreed to participate in the
11 conspiracy if the government proves each of the following
12 beyond a reasonable doubt:

13 One, the defendant directly conspired with
14 one or more conspirators to carry out at least one of the
15 objects of the conspiracy;

16 Two, the defendant knew or had reason to know
17 that other conspirators were involved with those with
18 whom the defendant directly conspired;

19 And, three, the defendant had reason to
20 believe that whatever benefits the defendant might get
21 from the conspiracy were probably dependent upon the
22 success of the entire venture.

23 In determining whether or not a particular
24 defendant was a member of the conspiracy, you may
25 consider the evidence of his or her conduct and actions

1 together with his other her own statements and
2 declarations. You my also consider and weigh the acts
3 and declarations of the co-conspirators which were made
4 during the course of the conspiracy and in furtherance of
5 it as bearing on the question of a defendant's membership
6 in a conspiracy. Evidence of a defendant's membership in
7 the Black Angels gang or the Ontario Varrio Sur gang by
8 itself is insufficient to establish that person's guilt
9 of a crime as a co-conspirator.

10 You must decide whether the conspiracy charged
11 in the indictment existed and if it did, who at least
12 some of its members were. If you find that the
13 conspiracy charged did not exist, then you must return a
14 not guilty verdict even though you may find that some
15 other conspiracy existed. Similarly, if you find that
16 any defendant was not a member of the charged conspiracy,
17 then you must find that defendant not guilty even though
18 that defendant may have been a member of some other
19 conspiracy.

20 Each member of a conspiracy is responsible for
21 the actions of the other conspirators performed during
22 the course and in furtherance of the conspiracy. A
23 defendant may be responsible for an act even if the
24 defendant personally did not commit that act or acts if
25 the defendant's co-conspirator committed the act in

1 furtherance of a conspiracy.

2 However, you may not find a defendant
3 responsible for a co-conspirator's actions that occurred
4 before the defendant joined the conspiracy. A person
5 cannot be held criminally liable for the substantive
6 crimes committed by other members of a conspiracy before
7 that person joined the conspiracy.

8 Therefore, you may find a defendant
9 responsible for a co-conspirator's objections or actions
10 if the government -- let me read this again.

11 Therefore, you may find a defendant
12 responsible for a co-conspirator's action or actions if
13 the government has proved each of the following elements
14 beyond a reasonable doubt:

15 One, a person committed an act;

16 Two, that person was a member of the
17 conspiracy; three, that person performed the action in
18 furtherance of the conspiracy;

19 Four, that person and the defendant were
20 members of the same conspiracy at the time that this act
21 or acts was or were committed;

22 And, five, the act fell within the scope of
23 that conspiracy and could reasonably have been foreseen
24 by the defendant to be a necessary and natural
25 consequence of the conspiracy.

1 A defendant may be found guilty of a crime
2 charged in the indictment even if the defendant
3 personally did not commit the act or acts constituting
4 the crime but aided and abetted in its commission. To
5 prove a defendant guilty of aiding and abetting a crime,
6 the government must prove beyond a reasonable doubt:

7 First, the crime was committed by someone;

8 Second, the defendant knowingly and
9 intentionally aided, counseled commanded, induced or
10 procured that person to commit each element of the crime;

11 And, third, the defendant acted before the
12 crime was completed. It is not enough that the defendant
13 merely associated with the person committing the crime or
14 unknowingly or unintentionally did things that were
15 helpful to that person or was present at the scene of the
16 crime. The evidence must show beyond a reasonable doubt
17 that the defendant acted with the knowledge and intention
18 of helping that person commit the crime.

19 The government is not required to prove
20 precisely which defendant actually committed the crime
21 and which defendant aided and abetted.

22 Racketeering Act 6 charges defendant Carlos
23 Rivera with distribution of methamphetamine in violation
24 of Title 21, United States Code, Section 841(a)(1). In
25 order for defendant Rivera to be found guilty of

1 Racketeering Act 6, the government must prove each of the
2 following elements beyond a reasonable doubt:

3 One, the defendant knowingly distributed
4 methamphetamine;

5 And, two, the defendant knew that it was
6 methamphetamine or some other prohibited drug.

7 Distributing means delivering or transferring
8 possession of the methamphetamine to another person with
9 or without any financial interest in that transaction.

10 The government is not required to prove the
11 amount or quantity of the methamphetamine. It need only
12 prove beyond a reasonable doubt that there was a
13 measurable or detectable amount of methamphetamine.

14 Racketeering Act 7 charges defendants Carlos
15 Rivera and Jessica Medina with possession with intent to
16 distribute methamphetamine in violation of Title 21,
17 United States Code Section 841(a)(1). In order for a
18 defendant to be found guilty of Racketeering Act 7, the
19 government must prove each of the following elements
20 beyond a reasonable doubt:

21 One, defendant knowingly possessed
22 methamphetamine;

23 Two, defendant possessed it with the intent to
24 distribute it to another person.

25 The government is not required to prove the

1 amount or quantity of the methamphetamine. It need only
2 prove beyond a reasonable doubt that there was a
3 measurable or detectable amount of methamphetamine.

4 It does not matter whether the defendant knew
5 that the substance was methamphetamine. It is sufficient
6 that the defendant knew that it was some kind of a
7 prohibited drug.

8
9 To possess with intent to distribute means to
10 possess with intent to deliver or transfer possession of
11 the methamphetamine to another person with or without any
12 financial interest in the transaction.

13 All right. This concludes my instructions for
14 Count 2 of the indictment. I will now move on to
15 instructions for Count 1 of the indictment.

16 The defendants are all charged in Count 1 with
17 conspiracy to violate the laws prohibiting involvement in
18 Racketeering Influenced and Corrupt Organizations in
19 violation of Title 18, United States Code, Section
20 1962(d). In order for defendant to be found guilty of
21 RICO conspiracy, the government must prove each of the
22 following elements beyond a reasonable doubt:

23 One, the enterprise alleged in the indictment
24 would exist and that it would have affected interstate
25 and foreign commerce;

1 Two, the defendant or a co-conspirator would
2 be employed by or associated with the enterprise;

3 And, three, beginning on a date unknown and
4 continuing to on or about April 7, 2010, the defendant
5 agreed that either the defendant himself or herself or a
6 co-conspirator would conduct or participate either
7 directly or indirectly in the conduct of the affairs of
8 the enterprise through a pattern of racketeering
9 activity.

10 The RICO conspiracy charged in Count 1 is a
11 distinct offense from the RICO violation charged in Count
12 2, the offense for which you have just received
13 instructions. There are several significant differences
14 between the two offenses of which I will now advise you.

15 The government is not required to prove that
16 the enterprise actually existed, that a defendant was
17 actually associated with the enterprise or that the
18 enterprise or its activities actually affected interstate
19 commerce.

20 In order for you to convict a defendant of
21 this crime, the government must prove beyond a reasonable
22 doubt that the defendant agreed to participate in the
23 enterprise with knowledge and intent that at least
24 one member of the RICO conspiracy would intentionally
25 commit or cause two or more racketeering acts within

1 ten years of each other. That one member could be the
2 defendant himself or herself or another person. The
3 government is not required to prove that a defendant
4 personally committed or agreed to personally commit
5 two or more racketeering acts.

6 The government is not required to prove that
7 each conspirator explicitly agreed with every other
8 co-conspirator to commit a RICO offense, knew all of his
9 fellow conspirators or was aware of all the details of
10 the conspiracy. Rather, it is only required that the
11 government prove that the defendant knew the general
12 nature and common purpose of the conspiracy and that the
13 conspiracy extended beyond his or her individual role.

14 Finally, in order to convict the defendant of
15 a RICO conspiracy offense, your verdict must be unanimous
16 as to which type or types of racketeering activity that
17 each defendant agreed that he or she or himself or
18 herself or a co-conspirator would engage in. For
19 example, at least two acts of distribution of illegal
20 controlled substances, possession with intent to
21 distribute a controlled substance, conspiracy to
22 distribute a controlled substance, illegal use of a
23 communication facility, extortion, or any combination
24 thereof.

25 I have already instructed you on the law of

1 conspiracy. You should apply those instructions here.

2 The racketeering activity which the government
3 charges the defendants agreed would be committed in this
4 case are: Extortion, possession with intent to
5 distribute a controlled substance, distribution of
6 controlled substances, conspiracy to distribute
7 controlled substances and illegal use of communication
8 facilities.

9 Each racketeering activity has its own
10 elements. I have already instructed you in the elements
11 of conspiracy to distribute a controlled substance, that
12 is Racketeering Act 1, distribution of a controlled
13 substance, Racketeering Act 6, and possession with intent
14 to distribute a controlled substance, Racketeering Act 7.

15 I will now instruct you on the elements of
16 extortion and illegal use of communication facilities.
17 As I previously stated, there must be at least
18 two specific racketeering acts that all of you find would
19 be committed by any member of the RICO conspiracy.

20 In order for an individual to be found guilty
21 of extortion in violation of California Penal Code,
22 Section 518, 519, 520 which is a felony under state law,
23 the government must prove each of the following elements
24 beyond a reasonable doubt:

25 One, an individual obtained property from the

1 alleged victim;

2 Two, the property was obtained with the
3 consent of the alleged victim;

4 Three, the alleged victim's consent was
5 induced by the wrongful use of force or fear;

6 And, four, the individual who wrongfully used
7 force or fear did so with the specific intent to induce
8 the alleged victim to consent to the giving up of his or
9 her property.

10 Fear may be induced by a threat to inflict an
11 unlawful injury on the person threatened, a third person
12 or the property of a person threatened or the property of
13 a third person.

14 The words unlawful injury mean an injury which
15 if inflicted would create civil liability against the
16 person doing it and would support a civil action against
17 him or her. A threat to do that which one was a legal
18 right to do is not a threat to do an unlawful injury.

19 To constitute extortion, the force or fear
20 induced by the threat must be the operating or inducing
21 cause which produces consent and results in the property,
22 money or other thing of value being delivered to another.
23 In some -- if some other cause is the primary and
24 controlling cause for the consent for the property being
25 delivered to another, the crime of extortion has not been

1 proved.

2 As used in the law of extortion, consent is
3 obtained from the person threatened with money or
4 property or other thing of value is turned over to
5 another with the understanding that the person threatened
6 or a third person will be saved from injury to the person
7 threatened, a third person or the property of the person
8 threatened or the property of a third person.

9 The delivery of the money, property or other
10 thing of value is the lesser of two unpleasant
11 alternatives. Consent as used in the law of extortion
12 exists under these circumstances notwithstanding the fact
13 that the person threatened may silently protest in his or
14 her own mind against the circumstances which compelled
15 the choice.

16 A coerced and unwilling consent compelled by
17 the wrongful use of force or fear constitutes consent in
18 extortion.

19 In order for an individual to be found guilty
20 of illegal use of a communication facility in violation
21 of Title 21, United States Code, Section 843(b), the
22 government must prove beyond a reasonable doubt that the
23 individual knowingly or intentionally used a telephone to
24 help bring about the crime of conspiracy to distribute a
25 controlled substance in violation of Title 21, United

1 States Code, Sections 846 and 841(a)(1) or the crimes of
2 distribution of narcotics or possession with intent to
3 distribute narcotics in violation of Title 21, United
4 States Code, Section 841(a)(1).

5 Each separate use of a telephone to bring
6 about one of these crimes is itself a separate crime.

7 Count 5 charges defendants Carlos Rivera,
8 Jessica Medina, Raul Prieto and other alleged
9 co-conspirators with conspiring to distribute specific
10 controlled substances in violation of Title 21, United
11 States Code, Section 846 and 841(a)(1).

12 In order for a defendant to be found guilty of
13 the conspiracy to distribute controlled substances as
14 charged in Count 5, the government must prove each of the
15 following two elements beyond a reasonable doubt:

16 First, beginning on an unknown date and ending
17 on or about April 7, 2010, there was an agreement between
18 two or more persons to distribute, A, methamphetamine,
19 or, B, heroin, or C, any combination of those controlled
20 substances;

21 And, second, the defendant joined in the
22 agreement knowing of its purpose and intending to help
23 accomplish that purpose.

24 To distribute means to deliver or transfer
25 possession of methamphetamine or heroin to another person

1 with or without any financial interest in that
2 transaction.

3 I have already instructed you on the law of
4 conspiracy. You should apply those instructions here.

5 The verdict form as to Count 5 will include
6 space for you to make findings regarding whether the
7 conspiracy involved particular drugs and drug quantities.

8 If you find a defendant guilty of the charge
9 in Count 5 of the indictment, you are then to determine
10 as to each such defendant whether the government proved
11 beyond a reasonable doubt both the type of controlled
12 substance as well as the amount of that controlled
13 substance that was reasonably foreseeable to the
14 defendant in connection with his criminal activity.

15 Your decision as to both of these questions
16 must be unanimous. Your determination of weight must not
17 include any packaging material.

18 Defendant Carlos Rivera is charged in Count 6
19 of the indictment with distribution of methamphetamine in
20 violation of Title 21, United States Code, Section
21 841(a)(1). In order for defendant to be found guilty of
22 that charge, the government must prove each of the
23 following two elements beyond a reasonable doubt:

24 First, on or about July 31, 2009, the
25 defendant knowingly distributed methamphetamine;

1 And, second, the defendant knew that it was
2 methamphetamine or some other prohibited drug.

3 The government is not required to prove the
4 amount or quantity of methamphetamine. It need only
5 prove beyond a reasonable doubt that there was a
6 measurable or detectable amount of methamphetamine.

7 Defendants Carlos Rivera and Jessica Medina
8 are charged in Count 10 of the indictment with possession
9 with intent to distribute methamphetamine in violation of
10 841(a)(1). In order for a defendant to be found guilty
11 of that charge, the government must prove each of the
12 following two elements beyond a reasonable doubt:

13 First, on or about August 6, 2009, the
14 defendant knowingly possessed methamphetamine;

15 And, second, the defendant possessed it with
16 the intent to distribute it to another person.

17 To possess with intent to distribute means to
18 possess with intent to deliver or transfer possession of
19 methamphetamine to another person with or without any
20 financial interest in the transaction.

21 It does not matter whether the defendant knew
22 that the substance was methamphetamine. It is sufficient
23 that the defendant knew that it was some kind of a
24 prohibited drug.

25 The government is not required to prove the

1 amount or quantity of methamphetamine. It need only
2 prove beyond a reasonable doubt that there was a
3 measurable or detectable amount of methamphetamine.

4 The crime of possession of a controlled
5 substance with intent to distribute charged in Count 10
6 includes the lesser crime of simple possession. If you
7 are not convinced beyond a reasonable doubt that the
8 defendant is guilty of possession of a controlled
9 substance with intent to distribute and all of you are
10 convinced beyond a reasonable doubt that the defendant is
11 guilty of the lesser crime of simple possession of a
12 controlled substance, you may find the defendant guilty
13 of simple possession of a controlled substance.

14 In order for the defendant to be found guilty
15 of the lesser crime of simple possession, the government
16 must prove each of the following elements beyond a
17 reasonable doubt:

18 First, the defendant possessed
19 methamphetamine;

20 And, second, the defendant possessed the
21 methamphetamine knowingly.

22 The crime of simple possession of a controlled
23 substance does not require proof that the government --
24 that the defendant possessed the controlled substance
25 with the intent to distribute.

1 A person has possession of something if the
2 person knows of its presence and has physical control of
3 it or knows of its presence and has the power and
4 intention to control it.

5 More than one person can be in possession of
6 something if each knows of its presence and has the power
7 and intention to control it.

8 If you find defendant Carlos Rivera or
9 defendant Jessica Medina guilty of the charge in Count 10
10 of the indictment, you are then to determine as to each
11 such defendant whether the government proved beyond a
12 reasonable doubt that the amount of methamphetamine
13 equaled or exceeded 50-grams of actual methamphetamine.
14 Your determination of weight must not include the weight
15 of any packaging material. Your decision as to weight
16 must be unanimous.

17 The government does not have to prove the
18 defendant knew the quantity of methamphetamine.

19 You are instructed as a matter of law that
20 methamphetamine is a Schedule II controlled substance,
21 and heroin is a Schedule I narcotic drug controlled
22 substance as those terms are used in the indictment.

23 It is solely for you, however, to determine
24 whether or not the government has proven beyond a
25 reasonable doubt that any of the others conspired to

1 distribute, possessed with intent to distribute or
2 distributed a substance which was methamphetamine, heroin
3 or some other prohibited drug.

4 Defendant Carlos Rivera is charged in Count 23
5 of the indictment with the possession of a firearm and
6 ammunition in violation of Title 18, United States Code,
7 Section 922(g)(1). In order for a defendant to be found
8 guilty of that charge, the government must prove each of
9 the following three elements beyond a reasonable doubt:

10 First, the defendant knowingly possessed the
11 Colt model Agent, .38 caliber revolver bearing serial
12 number H98877 or six rounds of .38 special caliber
13 ammunition bearing the head stamp of W-W Super;

14 Second, the Colt model Agent, .38 Special
15 caliber revolver bearing serial number H98877 or
16 six rounds of .38 special caliber ammunition bearing the
17 head stamp of W-W Super had been transported either from
18 one state to another or between a foreign nation and the
19 United States;

20 Third, at the time the defendant possessed the
21 Colt model Agent, .38 special caliber revolver bearing
22 serial number H98877 or six rounds of .38 special caliber
23 ammunition bearing the head stamp of W-W Super, the
24 defendant had been convicted of a crime punishable by
25 imprisonment for a term exceeding one year.

1 The knowledge element is limited to knowing
2 possession. A defendant need not be aware of his felon
3 status or that the firearm traveled in interstate
4 commerce.

5 A person possesses a firearm if the person
6 knows of its presence and has physical control of it or
7 knows of its presence and has the power and intention to
8 control it.

9 To establish that a defendant knowingly
10 possessed the firearm or ammunition, the government need
11 not prove the defendant's knowledge of the law, only that
12 the defendant consciously possessed what he knew to be a
13 firearm.

14 More than one person can be in possession of a
15 firearm if each knew or knows of its presence and has the
16 power and intention to control it.

17 An act is done knowingly if the defendant is
18 aware of the act and does not act through ignorance,
19 mistake or accident. You may consider evidence of the
20 defendant's words, acts or omissions along with all the
21 other evidence in deciding whether the defendant acted
22 knowingly.

23 The parties have agreed to certain facts that
24 have been stated to you. You should therefore treat
25 those facts as having been proved.

1 Because you must base your verdict only on the
2 evidence received in the case and on these instructions,
3 I remind you that you must not be exposed to any other
4 information about the case or to the issues it involves.
5 Except for discussing the case with your fellow jurors
6 during deliberations:

7 Do not communicate with anyone in any way and
8 do not let anyone else communicate with you in any way
9 about the merits of the case or anything to do with it.
10 This includes discussing the case in person, in writing,
11 by phone or electronic means, via e-mail, text messaging
12 or any Internet chat room, blog, website or other
13 feature. This applies to communicating with your family
14 members, your employer, the media or press and the people
15 involved in the trial. If you are asked or approached in
16 any way about your jury service or anything about this
17 case, you must respond that you have been ordered not to
18 discuss the matter and to report the contact to the
19 court. Do not read, watch or listen to any news or media
20 accounts or commentary about the case or anything to do
21 with it. Do not do any research such as consulting
22 dictionaries, researching the Internet or using other
23 reference materials, and do not make any investigation or
24 in any way try to learn about the case on your own.

25 The law requires these restrictions to ensure

1 the parties have a fair trial based upon the evidence
2 that each party has had an opportunity to address. A
3 juror who violates these restrictions jeopardizes the
4 fairness of these proceedings and a mistrial could result
5 that would require the entire trial process to start
6 over. If any juror is exposed to any outside
7 information, please notify the court immediately.

8 Some of you have taken notes during the trial.
9 Whether or not you took notes, you should rely on your
10 own memory of what was said. Notes are only to assist
11 your memory. You should not be overly influenced by your
12 notes or those of your fellow jurors.

13 The punishment provided by law for these
14 crimes is for the court to decide. You may not consider
15 punishment in deciding whether the government has proved
16 its case against the defendant beyond a reasonable doubt:

17 Okay. We have got to take a break before we
18 come back and hear closing arguments. All right. How
19 long? 10 minutes. All right. Remember the admonition.

20 (Recess from 10:57 to 11:13 a.m.)

21 (The following proceedings were held in the
22 presence of the jury:)

23 THE COURT: All right. All counsel are present.
24 All three defendants are present.

25 Ladies and gentlemen, we will now begin with

1 the closing arguments of counsel. The government which
2 as you know bears the burden of proof will go first and
3 will close. And so you will hear from the government
4 twice. All right. Mr. Dore.

5 MR. DORE: In this case, you heard a lot about the
6 city of Ontario which is a little bit east of here in San
7 Bernardino County. It is a place with homes and parks
8 and schools, but, unfortunately, it is also a territory,
9 a place ruled by the Ontario Black Angels gang and where
10 the defendants, we submit to you, committed their crimes.

11 Now, in some ways, the conduct here had no
12 boundaries. It wasn't restricted by the presence of the
13 children that defense counsel kept alluding to. It
14 wasn't stopped by people being in jail cells behind bars,
15 and it wasn't limited to the calls that we played for
16 you at trial.

17 In fact, today I am going to play clips of
18 some of those calls for you, just short ones, and you are
19 not going to need those binders anymore. But as you
20 listen to them, please keep in mind and note the
21 brazenness, the repetition and the familiarity.

22 In short, the defendants here wouldn't stop
23 even as arrests were made, as guns were taken and drugs
24 were seized. They kept going. They kept trying to buy
25 and sell methamphetamine and to help one another in the

1 process.

2 You can also tell this is no one shot deal.
3 We submit to you that as you listen to these calls and
4 the clips of them, there is no uncertainty, there is no
5 surprise.

6 These people know who everyone is. They know
7 who Bony is. They know what a ball is, when it is hot,
8 who is who and what is what. These defendants are all on
9 the same page. They are on the same team. And we submit
10 to you, ladies and gentlemen, that that team is the
11 Ontario Black Angels gang that whether as an active gang
12 member with tattoos engaging in drug trafficking and
13 extortion or as someone knowingly associated with the
14 gang taking part in pick-ups and collections of drug
15 proceeds or providing a safe house where drug and gun
16 deals can be consummated that these defendants Carlos
17 Rivera, Jessica Medina and Raul Prieto conspired to
18 distribute methamphetamine among other crimes and also to
19 participate in the operation and management of the Black
20 Angels gang through a pattern of racketeering activity.

21 Now, as you heard in those jury instructions
22 there are numerous counts in this case, and these are the
23 counts the defendants here are charged with. RICO
24 conspiracy, all three defendants are charged with, and on
25 down the line you see who is charged with what. All

1 three defendants are charged with the RICO conspiracy and
2 the conspiracy to distribute methamphetamine. I am going
3 to bounce around and address some of these charges in a
4 different order.

5 Before I do that, though, I want you to please
6 take note as reflected in those jury instructions that
7 the judge gave you, these are not co-extensive, the
8 crimes that are charged here.

9 We expect that you are going to hear an
10 argument about whether or not Jessica Medina and Raul
11 Prieto were members of the Black Angels gang. I am going
12 to argue to you later on why that doesn't matter for
13 purposes of the RICO crime, but, either way, when you are
14 considering the drug counts, for instance, Black Angels
15 gang doesn't make a difference, doesn't matter, you don't
16 have to find that. Please just focus on the respective
17 elements that apply to each given count.

18 There is some overlap when you talk about the
19 racketeering acts as you heard in those instructions, for
20 instance, the possession with intent to distribute itself
21 is a separately charged crime that can also constitute a
22 racketeering act. It is broken down in these exhaustive
23 jury instructions that you sat through. But just keep in
24 mind that these don't have to fit perfectly on top of
25 one another. Apply the elements as they relate to each

1 specific charge.

2 As I get going here, also, please keep in mind
3 that what I say doesn't matter. It is just argument.
4 The dots are the evidence. I can suggest to you how they
5 should be connected. That is one reason I use that
6 clunky I submit term, but, whatever I say, it is a
7 submission for you to decide.

8 Secondly, when you are thinking about the
9 jury instructions that I am going to emphasize here, all
10 the jury instructions apply. I am not telling you that
11 one is more important than the other. It is just what I
12 am focusing on, but please consider all the instructions
13 when you are reaching your decision here.

14 First count I wanted to cover was Count 23.
15 That is the unlawful possession of the firearm and
16 ammunition. You have got the firearm and ammunition that
17 were marked as Exhibits 236 and 237 in front of you here
18 on the counsel table.

19 There are three elements for this crime.
20 One is the knowing possession of the gun or ammunition.
21 And the second element there is the interstate nexus,
22 whether or not the gun and ammunition traveled in
23 interstate commerce. Third element being whether Carlos
24 Rivera, he is the only person charged in this count,
25 whether he has a prior felony conviction.

1 As you heard the parties stipulated as to the
2 second and third count. I believe it is Exhibit 275
3 where Carlos Rivera stipulated the parties agreed that he
4 had a prior felony conviction. Exhibit 276 is where the
5 parties agreed that the gun and the ammunition, the Colt
6 .38 revolver and the ammunition stamped W-W something
7 else, W-W something, traveled in interstate commerce. So
8 those are off the board. The parties have agreed that
9 those elements have been satisfied.

10 What you have left then is the knowing
11 possession of that firearm and ammunition. Evidence that
12 you heard on this point included Darren Williams who
13 engaged in the observation and saw someone arrive with
14 the brown case with the yellow wool interior. You have
15 also got Wes Willemstyn who is the Ontario police officer
16 who saw Carlos Rivera walk away, continue to walk away as
17 he told him to stop, continue to walk away into the house
18 carrying that case which was later found to have a loaded
19 handgun. You have also got Josh Burks who found that
20 handgun with him. Where did he find it? He found in the
21 stand-up refrigerator in Raul Prieto's house. And then
22 as I mentioned before, we have got the two stipulations.

23 These photographs are in evidence, Exhibit 35
24 is the handgun in the case, and you have also got the
25 words of Carlos Rivera himself. This is a clip from

1 Exhibit 100.

2 (Tape played.)

3 MR. DORE: I submit to you, ladies and gentlemen,
4 that that constitutes knowing possession of a firearm.
5 Carlos Rivera knew what it was, he knew he had it and he
6 tried to hide it. And just in case there is any further
7 question, he specified exactly what type of gun it was
8 that he hid.

9 (Tape played.)

10 MR. DORE: As you heard, ladies and gentlemen, on
11 this revolver, on the side of it, it said Colt .38
12 special. It has the Colt emblem on it. We submit to you
13 that the defendant Carlos Rivera knowingly possessed that
14 handgun and the ammunition found inside of it on that day
15 of July 22nd, 2009.

16 Another count I want to address briefly is
17 Count 6, the distribution of methamphetamine. This
18 relates to that July 31 seizure of the 4.4-grams of
19 methamphetamine found in the driver of the VW bug's side.
20 You heard some calls about that.

21 Here, there are two elements, that Carlos
22 Rivera who is the only person charged in this crime
23 knowingly distributed that methamphetamine, and, second,
24 that he knew it was methamphetamine or some other
25 prohibited drug. Witnesses here included Travis Cotton

1 who observed the old VW bug ride up and Carlos Rivera
2 walk out and speak to the two occupants, Ron Watson, the
3 officer who came in off his graveyard shift, testified
4 about the traffic stop on that VW bug and the drugs that
5 were recovered from the driver's side, Travis Hartman,
6 the Ontario police officer who was with Ron Watson and
7 also recovered that 4.4-grams of meth from the driver's
8 side. And again the parties stipulated. Exhibit 277,
9 the 4.4-grams of methamphetamine actual were found in
10 that sock.

11 Now, again, you heard calls from Carlos Rivera
12 setting up the deal, and you will hear Robert Tolson in
13 this call as you did during the trial. Remember that
14 voice because you are going to hear it again.

15 (Tape played.)

16 MR. DORE: Again, I submit to you, ladies and
17 gentlemen, that Carlos Rivera knows exactly what it is,
18 and he knows that it is the methamphetamine that he had
19 sold to Robert Tolson and that it is the methamphetamine,
20 the 4.4-grams of methamphetamine, found in the sock of
21 Carl Cook, the driver of that VW drug on July 31, 2009.
22 There was a photograph of that small bindle of
23 methamphetamine. And there is the DEA lab report. And,
24 next to it, the evidence envelope identified by Ron
25 Watson as having the tag that he filled out and the

1 report indicating that the contents were 4.4-grams of
2 actual methamphetamine.

3 Count 10, Carlos Rivera and Jessica Medina are
4 charged with this one. This crime has two elements, and
5 it relates to that August 6th, 2009 seizure of the almost
6 half pound of meth found in this thing that looks like a
7 car battery. The elements here are that defendant
8 knowingly possessed the methamphetamine and that
9 defendant possessed it with the intent to distribute it
10 to another person.

11 Please note as part of the instructions you
12 were instructed that it doesn't matter if the defendant
13 knew that it was meth. It only matters that the
14 defendant knew it was some kind of prohibited drug.

15 Witnesses here included Maynor Arana from the
16 Ontario Police Department who observed someone arrive and
17 have a black box with a strap talk to Carlos Rivera and
18 walk into that apartment at Vineyard Avenue, Josh Burks
19 who recovered that battery from the back of the red
20 Acura, opened it and found inside this Tupperware
21 container that had two bags of an off-white crystalline
22 substance, Mike Lorenz who went and talked with Carlos
23 Rivera that night August 6, 2009, recovered more than
24 \$3,000 cash from his pocket which he had on a late night
25 sitting in his apartment, Matt Gonzalez who confirmed the

1 fingerprint analysis on this Tupperware container marked
2 as Exhibit 227 and found that the fingerprints belonged
3 to Carlos Rivera, Chris Martinez who took custody of the
4 evidence, put it in the evidence envelope.

5 And, again, here you also have the stipulation
6 of the parties that there were 219-grams of actual
7 methamphetamine recovered.

8 DEA Special Agent Paris, by the way, also
9 noted as you may remember that DEA practice is to
10 consider a use quantity, a personal use quantity of
11 methamphetamine to be one-tenth of a gram. You heard
12 that a sugar packet would contain something on the order
13 of ten doses. That would mean that 219-grams equals over
14 2,000 doses of methamphetamine.

15 Again, here are some of the photographs you
16 saw, the red Acura, the open battery containing the
17 Tupperware container, the Tupperware container and the
18 two large bags of the white crystalline substance inside
19 and, again, the evidence envelope filled out by Detective
20 Martinez with his handwriting on it and the lab report
21 resulting from that finding that the evidence contained
22 inside had 219-grams of actual methamphetamine at a
23 98.2 percent purity.

24 Now, again, you heard the calls. For
25 instance, this call, I won't bother playing it for you.

1 You can read the text on the screen. Carlos Rivera was
2 talking to David Navarro and he says, yeah, that is my
3 red Acura I am washing. And Jessica Medina, who I will
4 get to a little bit more who was as much a part as Carlos
5 Rivera who had the knowledge and knew that this stuff was
6 going to be distributed. She is a part of this as you
7 heard when the officers arrive at her place. Where are
8 the keys to this car? She says, I don't know where the
9 keys are, I don't know where the keys are. But you heard
10 in the calls she had with others, she knew exactly where
11 the keys are.

12 (Tape played.)

13 MR. DORE: She had them in her pocket. And why
14 didn't she tell the officer she had them in her pocket?
15 She told you.

16 (Tape played.)

17 MR. DORE: And her house was linked to that car.
18 She was not surprised by any of this. I submit to you
19 that when you listen to these calls, you listen to the
20 tone of her voice. It is not like, oh, my God, what was
21 Carlos doing, what on earth is going on here, what is in
22 the car.

23 Everyone here knows what is going on including
24 the three grand in cash that Carlos Rivera had in his
25 pocket, she claimed to be to buy another car. But I

1 submit to you if you listen to this call, you can clearly
2 infer from it that that money was meant for something
3 else and that Jessica Medina knew what it was meant for.

4 (Tape played.)

5 MR. DORE: Here is another one where Jessica
6 Medina is talking about what led up to that arrest and,
7 see, again, is there any surprise about what happened,
8 about who came through, about what that person must have
9 had.

10 (Tape played.)

11 MR. DORE: And not only was there drugs at the
12 apartment, you can tell from the calls, we submit to you,
13 that Jessica Medina knew about the larger operation, that
14 Carlos Rivera was involved in drug dealing and had other
15 spots, other places where where he maintained drugs.

16 (Tape played.)

17 MR. DORE: Junior breaks in, but I submit to you
18 that you listen to that and she knows exactly where
19 Carlos Rivera has a spot and where he has other drugs,
20 what other officers would have found in addition to what
21 was in that car. She knows these are drugs. She knows
22 what Rivera is doing. What they are doing is selling
23 narcotics. There is one more call on that point where
24 she makes again clear that she knows what is going on.

25 (Tape played.)

1 MR. DORE: Everybody would have been caught up.
2 She knew that there were drugs here. She knew what
3 Mr. Rivera was doing, and she played an active role in
4 it. And we are going to get to that role a little bit
5 more in Count 5. All three defendants are charged in
6 Count 5 with conspiracy to distribute methamphetamine.

7 The elements here, that beginning on that
8 unknown date and continuing through April 7, 2010, there
9 is an agreement to distribute methamphetamine. Second,
10 that the defendant joined that agreement knowing of its
11 purpose and trying to help accomplish it.

12 There are some photographs of the
13 methamphetamine recovered in this case, the 4.4-grams and
14 the almost half a pound recovered from that battery
15 outside of Jessica Medina's and Carlos Rivera's
16 apartment.

17 And just in case it is argued later on that
18 Jessica Medina didn't know anything about this, she is
19 not a part of this, who knows what Carlos Rivera is
20 doing, she is in the dark, listen to this call, and
21 listen to the typical practice that Carlos Rivera
22 describes with respect to the woman he is with.

23 (Tape played.)

24 MR. DORE: What usually happens, Jessica Medina
25 who lives with Carlos Rivera, and you have heard evidence

1 that they are together, I submit to you that she is the
2 heina being referred to there engaging in their usual
3 practice to go and get drugs and to take part in Carlos
4 Rivera's drug distribution, their drug distribution.

5 Here is another call I would like you to
6 please focus on. I am not going to play a clip of it,
7 but it is a call between Carlos Rivera and Eric. And
8 just take a glance at that transcript and please remember
9 the name Bony. You are going to hear it again, and
10 remember the name Eric. Here, you have got Carlos Rivera
11 talking about going through Bony and talking about stuff
12 you might get. You are going to hear that name again,
13 but before we get there, let's talk about Raul Prieto.

14 Now, whether or not he could read, write and
15 spell as his mother said, we submit to you the guy could
16 sell and he did. And he talked to Carlos Rivera about
17 it, and he was talking about methamphetamine and an ounce
18 of it and he was talking about what he could push, what
19 he could move. Please take a listen to some of these
20 calls.

21 (Tape played.)

22 MR. DORE: Here is another one, and there is that
23 name Bony again, and I leave it to you to think about.

24 (Tape played.)

25 MR. DORE: I will move it. Then, ladies and

1 gentlemen, I submit to you that that is an agreement a
2 conspiracy to distribute methamphetamine and that Bony is
3 a character that Raul Prieto knows, that Carlos Rivera
4 knows and later on that you will hear Jessica Medina
5 knows, that these people again were all on the same page
6 trying to sell methamphetamine. And as I mentioned
7 before, is there any surprise in this call, is there any
8 lack of certainty about what are you talking about or
9 rather are these defendants right there together on the
10 same page.

11 And it is a bit of an aside but you may hear
12 from the defense, from Mr. Prieto's counsel about, well,
13 look, there were only two calls in this case. There were
14 12 non-pertinents from Juan Lemus. Again, I submit to
15 you that you heard lots of evidence about how tight these
16 guys are, brothers, quote, unquote, not actually by
17 blood. The mom referred to as Mom, doing deals at the
18 house. I submit to you that these guys are talking
19 different days, different ways, more than 14 times and
20 that when you listen to these calls, there is no doubt,
21 there is no suggestion that these guys haven't been
22 talking about this stuff before.

23 And also please note the date, August 5, 2009,
24 Carlos Rivera just got popped two weeks ago with that
25 gun. Then one week after that, they got the 4.4-grams,

1 but he is still going. He is still getting more.

2 I am not going to bother playing this
3 one because it is in Spanish. This one is actually in
4 evidence, 88, because it is a Spanish language
5 transcript. Referred to this guy as Mr. Nicolada. He is
6 the one you heard had the conversation with Carlos Rivera
7 about getting the Nicolada. And you heard testimony from
8 Special Agent Steve Paris about how these nonsequiturs
9 suggest drug code. Are they really talking about riding
10 over there with a beer full of tomato juice, or are they
11 talking about something different. I submit to you,
12 ladies and gentlemen, it is something different. And it
13 is almost 100 percent just like you saw in that DEA lab
14 report that the methamphetamine recovered in that fake
15 thing was at 98.2 percent.

16 (Tape played.)

17 MR. DORE: That is August 6, 2009, about
18 5:00 o'clock, same night when officers went to Mr.
19 Rivera's apartment, Jessica Medina's apartment and got
20 that battery with the half-pound of meth out of that red
21 Acura. Once again, no confusion, same exhibit, same
22 call, August 6, 4:51 p.m.

23 (Tape played.)

24 MR. DORE: Again, ladies and gentlemen, this count
25 is a conspiracy to distribute methamphetamine. I can

1 push that, I submit to you, is an agreement for Carlos
2 Rivera to give methamphetamine to Raul Prieto so he can
3 sell it and that this isn't the first time that has
4 happened.

5 Again, little bit later, couple of hours later
6 that same night, another call Mr. Nicolada, did you get
7 it, yeah, I get it, how does it look, it looks good. It
8 better, it was 98.2 percent pure. That same night the
9 cops show up at Rivera's house and Jessica Medina's house
10 and get that battery and get the meth out of it that was
11 in this Tupperware container.

12 So then we move to more calls and here is
13 where we get to Jessica Medina. Day after, she is
14 starting to make reports, what happened. She is not just
15 making reports, though. She is doing Carlos Rivera's
16 work. You heard the calls where she starts making calls
17 like this one to Robert Tolson who you heard before.
18 What is she doing? She is making collections.

19 (Tape played.)

20 MR. DORE: Here, she is even more specific.

21 (Tape played.)

22 MR. DORE: All right. There is the agreement.
23 There is a reflection of the agreement. I am not saying
24 that is the only part of it. It is a reflection of the
25 agreement. Carlos Rivera, I got money out there. Robert

1 Tolson, you heard from Robert Tolson before when he is
2 making that deal to get the 4.4-grams. Now, here he is,
3 Jessica Medina talking to Carlos Rivera and Jessica
4 Medina saying Carlos Rivera told me to get at you to get
5 the money. I submit to you that is money relating to the
6 drug dealing. It is making a collection from Robert
7 Tolson. And her role in this is not some innocent
8 bystander, it is not some woman in the dark. She says
9 all right. She knows exactly what is going on.

10 Now, given to you or given to the cousin. You
11 heard that Carlos Rivera is not actually related to Raul
12 Prieto. I submit to you that they are very tight and
13 that you heard the testimony from Mr. Prieto's mother
14 saying that Carlos Rivera has referred to her as his
15 auntie. You heard the call. It is Exhibit 100 where
16 Carlos Rivera talks about when he got hit for the gun he
17 was at his auntie's house. I submit to you, ladies and
18 gentlemen, the cousin being referred to here is Raul
19 Prieto.

20 (Tape played.)

21 MR. DORE: No more. It has been something they
22 have been doing, but let's take a beat because the cops
23 are around, it is hot. And, then, here is Bony again.
24 You heard about him in the conversation between Prieto
25 and Rivera. I submit to you that he is the guy who is

1 the supplier where Rivera gets some drugs, maybe
2 sometimes the stuff is whack, it is not as good as the
3 other stuff Rivera gets, but it is part of the chain
4 giving methamphetamine down the line to Rivera who then
5 gives it to others including Raul Prieto to sell. And
6 Jessica Medina knows exactly what is going on there with
7 respect to Bony.

8 (Tape played.)

9 MR. DORE: Note the date here, August 11th, 2009,
10 Exhibit 148. This is five days after officers just
11 raided their place and got the half pound of
12 methamphetamine out of the battery. And she is talking
13 about getting more stuff, and where she can keep it. And
14 then just to close the loop on Bony, we have got the call
15 with Jessica Medina talking about Bony and Crook.

16 (Tape played.)

17 MR. DORE: I will spare you the alarm sound in
18 that call. But, again, ladies and gentlemen, I submit to
19 you that this is part of the typical practice, again,
20 using Raul Prieto's house as a safe house. It is where
21 the cops got that loaded firearm, and it is also where
22 you heard testimony from David Navarro about the two drug
23 deals that happened there where Navarro was present with
24 Prieto and Carlos Rivera when Rivera was conducting drug
25 deals, and that is entirely consistent with here using

1 Prieto's house to engage in a three-way call with Bony
2 with Rivera and with Ms. Medina. It is a safe place
3 where they feel like they can get their job done.

4 Again, another quick aside, please don't get
5 distracted by the street lawyering that you heard in
6 these various calls, what cops can do, what they can't
7 do, what is allowed on a parole search, what isn't. The
8 law you have to follow is in the instructions that you
9 were given. And I submit to you again, ladies and
10 gentlemen, these guys, if anything, their statement of
11 law suggested they knew it was something they were trying
12 to avoid, they were trying to act in a way that they
13 thought would put them separate and apart from where they
14 would get hit or get caught. Doesn't mean they are
15 right. Doesn't mean these guys have law degrees.
16 Doesn't mean if you keep it in the car and the car is in
17 Nacho's name, you have the key, you are using the car, it
18 is, in fact, where you put the battery full of meth, that
19 it doesn't link back to you.

20 Other parts of the same call to Raul Prieto
21 just to drive home the fact that we are not talking here
22 about anything these guys are surprised about. They know
23 exactly what is going on, and they are using the phone to
24 do it, and they are using the phone to make agreements
25 about how to sell other drugs as well.

1 Raul Prieto, I got some ecstasy, you know
2 where I can sell it, I can let you know. Do you know
3 anybody that wants to buy soda? Picked some up, it is
4 pretty bomb and just in case anyone is wondering, hey,
5 what is soda, Rivera tells you, it is coke. Get it?
6 Coca-Cola, Coke.

7 Let's move to the next count. Just to tie the
8 bow on that one. Jessica Medina, Raul Prieto and Carlos
9 Rivera all knew what was going on, they knew what was
10 going on together. They were taking part in selling and
11 distributing methamphetamine around Ontario. There was
12 no surprise in what they were doing. They were all
13 playing a part.

14 Now, let's get to RICO. These are the
15 instructions. They are pretty long, but I think if you
16 walk through them, they are not as complicated as they
17 may seem. The substantive RICO count, Racketeer
18 Influenced and Corrupt Organizations Act. That
19 one charges Jessica Medina, and it charges Carlos Rivera
20 alone. For this one, you heard you need to have an
21 on-going enterprise, defendant was employed by or
22 associated with the enterprise and on and on, and I will
23 walk through each of these individually. You are going
24 to have them back there with you to look at.

25 Enterprise, is there an enterprise. We submit

1 to you, ladies and gentlemen, that the Black Angels is an
2 enterprise. No accident that Rivera has got that stuff
3 on his arm. That is not just out of the blue like, hey,
4 I like the word black, I like the word angel. It is in
5 homage to something. It is an existing enterprise, a
6 thing that he belongs to, that operates in the City of
7 Ontario.

8 You heard about the gang meetings. You heard
9 about paying dues. This was a working association. And
10 it is no coincidence that there are other guys with the
11 same sorts of tattoos. Black Angels on this guy. Black
12 Angels on these guys. All got the same tattoos. They
13 are part of the same group, same affiliation. Further
14 evidence that we have an enterprise here is the graffiti.
15 It is also all over the place in public. The gang is
16 flexing its muscles showing who they are.

17 I will refer to this photograph a little bit
18 later. I submit to you, ladies and gentlemen, that looks
19 like a truck-loading depot with the 5 and the 4, and the
20 openings where maybe you would back a truck up to unload
21 something.

22 Here is more graffiti laying out very clearly
23 the three branches of the Black Angels gang: OAN,
24 Angelitos Negros; OBA, Black Angels; and OVS, Ontario
25 Varrio Sur. And each of these the O, as you heard,

1 represented Ontario. And it wasn't even on the streets
2 of Ontario where it stopped. It included the jail,
3 etched into the steel of the tray of the jail cell is a
4 shout out to the Ontario OBA's, the Black Angels gang.
5 And you saw the rosters including Lonely, Lazy and Little
6 Reals.

7 And this one which is a disaster to look at on
8 the powerpoint, it is so hard to see, but you will have
9 it back with you. It is 247. This is the roll call we
10 talked about with the list of the gangs, the gang
11 members, Los Black Angels. And, again, if you work in an
12 office, maybe you have got a telephone directory, maybe
13 you have got a list, you know who works there, you have
14 an identification card. I submit to you that, here, we
15 are talking about a gang, we are talking about a group.
16 These guys are members of it.

17 We will get to it a little bit later. You saw
18 the words Crook and Little Reals on that graffiti.
19 Employed by or associated with the enterprise. And this
20 is what I am going to get to a little bit later also in
21 the RICO conspiracy in relation to Raul Prieto. You
22 don't have to just be a member of Black Angels to be
23 associated with it. You can be liable for RICO even if
24 you are not a full-fledged, card-carrying member of the
25 enterprise. If you are helping it out, if you are

1 associated with it, then you are good for this crime.

2 I submit to you, ladies and gentlemen, this
3 law was written, it is a very tightly woven net intended
4 to catch even the smallest fish. This is not something
5 going after just the top level guys. If you are helping
6 out the gang, if you are playing a part, then you are
7 associated with it.

8 Now, we are just talking here about the RICO
9 conspiracy so I will limit this discussion to Rivera and
10 Medina. Rivera, I submit to you, ladies and gentlemen,
11 there is no question he is associated with it. It is
12 written all over him. He is a part of the Black Angels.
13 I also submit to you, ladies and gentlemen, that the
14 woman whose name is tattooed just below that Ontario
15 spelled with the Spanish language pronunciation that you
16 heard associated with the Black Angels gang with
17 two large wings sprouting out of it on the father of her
18 children's chest is something that suggests she knew
19 exactly what his role was. That she knew about Black
20 Angels gang as well as Mr. Prieto's mom knew about the
21 Black Angels gang and that Carlos Rivera was a part of it
22 and that the stuff she was doing was designed to help her
23 husband, not her husband, the person she was living with
24 who was a part of that gang.

25 Because among other things Carlos Rivera

1 doesn't hide it. When the money is on the table, and he
2 is feeling a little bit pressed when Robert Tolson calls
3 him and says we just got popped for that 4.4-grams that
4 was in the guy's sock, it was a little bit weird, you
5 know, what is going on. Rivera makes very clear.

6 (Tape played.)

7 MR. DORE: This isn't something in the shadows.
8 Unfortunately, for the people of Ontario, this is
9 something out there. You saw the graffiti. You saw it
10 written on him. It is hot in San Bernardino. This guy
11 is walking around showing his tattoos. He is a member of
12 the Black Angels, and he is not afraid to share that
13 information with others.

14 And he shared it with Robert Tolson who
15 himself is a member of the Black Angels as you heard and
16 I submit to you also was associated with the gang, making
17 deals, making drug running exercises for them. I submit
18 Jessica Medina knows this just as well. Further evidence
19 of that is when she is talking about the phone. Even
20 when Rivera is in custody, again, we are only talking
21 five days after they get hit for that half pound of meth
22 in the battery. She is making calls, and she is making
23 calls for him.

24 (Tape played.)

25 MR. DORE: Take note also, ladies and gentlemen,

1 what phone she is talking on. You are going to get the
2 Spanish language translations, but you heard from Mike
3 Precup who is the wiretap analyst way back on Tuesday
4 talking about the call data and how he verified it
5 including the numbers used, times, dates. I submit to
6 you that the same phone number used by Carlos Rivera
7 early on is the same phone that Jessica Medina is using
8 after he goes into custody on August 6, 2009.

9 And that phone is something she is using to
10 stay in touch with all the other parts of the gang, all
11 the other parts of his criminal conspiracy because these
12 guys, they are not in the phone book. How else are you
13 going to find them? You need the phone. You need the
14 numbers that you already have.

15 Now, let's talk about participated directly or
16 indirectly in the conduct of the affairs of the
17 enterprise through a pattern of racketeering activity.
18 And to conduct or participate means the defendant had to
19 be involved in the operation or management of the
20 enterprise. It is a mouthful so we are going to have to
21 break it down a little bit.

22 You don't need to show, we don't need to show
23 that the defendants here were the actual tippy-top of the
24 Black Angels gang. They could be participating in the
25 operation or management of the enterprise acting under

1 the direction of others.

2 And I am going to walk through a couple of
3 exhibits, a couple of recordings why I submit to you that
4 is exactly what Carlos Rivera and Jessica Medina were
5 doing here. This one up on the screen, Exhibit 162, the
6 calls between Carlos Rivera and David Navarro. What we
7 have been looking for, those little things. You heard
8 David Navarro tell you that those were the guns that they
9 were trying to get for the gang. And what we have been
10 looking for, the we is the Black Angels gang. And that
11 David Navarro, as he testified, which I believe is
12 uncontroverted, obviously, your memory controls. David
13 Navarro is a pretty high-up guy on the street at the
14 time. He is a big cheese and he is talking to Carlos
15 Rivera about what they could get and Rivera is trying to
16 do stuff for him, do stuff for them to get the gun.

17 But then it goes wrong, the cops get it.
18 July 22nd, 2009. Cops now have the gun. Rivera lost it.
19 What does he do? He reports that to David Navarro. I
20 was doing something for us. I submit to you, ladies and
21 gentlemen, that us is the gang. They got that shit.
22 They got the gun.

23 Ms. Medina wasn't really any different. You
24 heard the call where she reported to David Navarro what
25 was going on, that Carlos Rivera had been taken in

1 knowing that David Navarro was a high-up member of the
2 Black Angels.

3 Now, what is a pattern of racketeering
4 activity? You need at least two racketeering acts to
5 pose a threat of continued criminal activity. So please
6 keep in mind we need to show you beyond a reasonable
7 doubt not just that these things happened but there is a
8 threat of them continuing. This was not an isolated deal
9 where it randomly happens one day, randomly happens
10 another, these things are somehow connected. It is part
11 of an ongoing thread.

12 This charge, the substantive RICO count is a
13 little bit different in that you need to show what these
14 defendants actually did. We will get into RICO
15 conspiracy when it is a little bit different. These guys
16 for the RICO substantive count, Carlos Rivera and Jessica
17 Medina, they can't be on the hook for what other people
18 did. It is what they did.

19 And, here, Racketeering Act 1, please note
20 this. That is the conspiracy to distribute narcotics.
21 That is the one that Carlos Rivera and Medina are, we
22 have alleged, are responsible for or the grand jury
23 alleged.

24 Racketeering Act 6, the distribution of
25 4.4-grams. That is that July 22nd deal with the

1 methamphetamine in Robert Tolson or Carl Cook's sock who
2 was in that VW with Robert Tolson.

3 Racketeering Act 7 is the possession with
4 intent to distribute the 219-grams of meth. As I
5 mentioned before ladies and gentlemen, this little
6 diagram, there are some parts of these charges that are
7 overlapping. That is why I am not going to get too into
8 the elements for the racketeering acts because that is
9 basically what I covered before, why Carlos Rivera and
10 Jessica Medina were conspiring to distribute
11 methamphetamine, why both of them possessed
12 methamphetamine, the 219-grams with the intent to
13 distribute it and why Carlos Rivera distributed the
14 4.4-grams of methamphetamine.

15 I submit to you that as you consider those
16 elements with respect to the earlier counts I discussed,
17 you can use that to help determine whether or not these
18 racketeering acts were something that satisfies the
19 elements of the substantive RICO count.

20 Finally, the interstate commerce. Please note
21 again that the connection here needs to only be minimal,
22 and I submit to you, ladies and gentlemen, that among
23 other things you have got the graffiti at that, what
24 appears to be a trucking loading station. You have got
25 the use of cell phones and the payment of cell phone

1 bills which I submit to you reflects interstate nexus,
2 interstate commerce. You have got the testimony of Steve
3 Paris talking about how methamphetamine is man made, how
4 the ingredients are man made and how you get those at
5 large retailers maybe a Home Depot. We submit to you,
6 ladies and gentlemen, that that along with the gun which
7 the parties stipulated to traveling in interstate
8 commerce, all provided the satisfactory link, the minimal
9 necessary link to get the conduct of the gun into the
10 interstate route.

11 Finally, the last count I am going to address
12 is the RICO conspiracy count which is Count 1. Again,
13 the elements here are similar but a little bit different.
14 This is not a matter of what the defendants actually did.
15 This is a function of what they agreed to do, and so it
16 is a matter of whether the enterprise would exist,
17 whether or not it would have affected interstate commerce
18 whether the defendant or a co-conspirator would have been
19 employed or associated with the enterprise and whether
20 the defendant agreed that the defendant or a
21 co-conspirator would participate directly or indirectly
22 in the conduct of the affairs of the enterprise through a
23 pattern of racketeering activity.

24 Just to break that down a little bit because
25 Congress didn't do a wonderful job in making this simple.

1 But if you think about it, the conspiracy is really the
2 agreement, the agreement here is the crime. What are
3 these defendants agreeing to do? Whether or not it
4 actually happened, whether or not like the RICO
5 substantive count, for instance, they actually did those
6 things that would constitute the pattern of racketeering
7 activity.

8 Here, it is a matter of what they agreed to
9 do, and, again, you don't have to be a member of the
10 Black Angels to agree to help them out, to agree to
11 participate in the criminal conduct that they are
12 engaging in. You just need to agree to help out the
13 enterprise.

14 So here is a little slide with checks and X's
15 just to, again, drive home the fact that what we are
16 talking about when we are talking about a conspiracy is
17 the plan, it is the partnership. It doesn't have to be a
18 formal agreement. It is not like buying a house, where
19 you are sitting around the table signing pages. You
20 don't need to be familiar with all the details. They are
21 not sitting in the war room talking about everything the
22 Black Angels does, the scope of the organization. And
23 you don't need to all be members at the same time.

24 What you need to be is in agreement about
25 stuff you are going to do that is racketeering activity

1 to benefit the enterprise.

2 Now, I talked a little bit about this before.
3 Would be employed or associated with the enterprise.
4 Again, and this is important because this relates to
5 Jessica Medina, Carlos Rivera and Raul Prieto. We got
6 into a little bit today about other Crooks and whose name
7 is up on that wall. I submit to you, ladies and
8 gentlemen, that doesn't matter. It doesn't matter if
9 Raul Prieto was a member of the Black Angels.

10 It doesn't matter whether or not he actually
11 told those officers from the Upland Police Department
12 what he was OBS. We don't know why he would have or
13 wouldn't have done it. We don't know if late at night he
14 wanted to flex and show, yeah, I am a part of this, I am
15 with my guy who I want him to think better of me.

16 I look up to Carlos Rivera. He is my guy. I
17 want him to think that I am hard, I am saying I'm OVS.
18 Whether or not that is true, it doesn't matter because I
19 submit to you, ladies and gentlemen, there is tons of
20 evidence here that indicates to you that Carlos Rivera
21 and Raul Prieto were connected and that Raul Prieto knew
22 everything that Carlos Rivera was doing, that he was
23 helping him out, and that he was an associate of the
24 gang.

25 He is making his house available to drug deals

1 at which David Navarro who is one of the top guys of
2 Black Angels is at his house. He is allowing Carlos
3 Rivera to bring a loaded gun into the house and to make
4 the deal there. He is sitting up or permitting, if you
5 infer from the call, Jessica Medina and Bony to have a
6 three way call at his place.

7 He is working with Carlos Rivera whom anyone
8 hanging out with Carlos Rivera including Mr. Prieto's mom
9 would know he is an Ontario Black Angels gang member.
10 And that this association, this assistance, this attempt
11 by him to help out Rivera and thereby help out the gang
12 sufficiently associates him with the gang so that the
13 criminal conduct here is part of the conspiracy that he
14 is tied into this and that that very tightly woven net
15 covers him and applies to him as well.

16 Now, the pattern of racketeering activity.
17 Here, again, it is slightly different. It is not a
18 matter of what the defendants actually did. It is what
19 they agreed to do and the types of crimes that they may
20 have agreed to commit that other people, other
21 co-conspirators may have committed. So it doesn't have
22 to be Raul Prieto, for instance, who is actually making
23 the sale. If he is agreeing with Carlos Rivera, yeah,
24 give me that, I will push it, I submit to you, ladies and
25 gentlemen, that is an agreement that this stuff is going

1 to happen.

2 As you can see in the bottom bullet point
3 there, the government is not required to prove that
4 defendant personally committed or agreed to personally
5 commit two or more racketeering acts.

6 You have got to be unanimous. You guys all
7 have to agree as to what these folks were agreeing to do,
8 and I am going to outline for you a list of the various
9 racketeering acts that they can be held responsible for
10 and that you folks are going to have to agree, if you
11 agree, unanimously, that a given defendant is on the same
12 page for two of them.

13 So we need at least two of these acts within
14 ten years of each other, and you see the bullets before
15 you. I am not going to take the time to read them all to
16 you. Please note that one of them is possession with
17 intent to distribute, conspiracy to distribute controlled
18 substance, illegal use of a communications facility. You
19 need at least two acts for these, and it can be two of
20 the same one. It is not like it can only be one
21 distribution and one extortion. If there are multiple
22 acts of extortion, that is two acts. If it is multiple
23 uses of the telephone to take part in a drug deal, that
24 is two acts and right on down the line.

25 You heard the elements of some of these

1 crimes, distribution, knowingly distributed controlled
2 substance, knew that it would be a prohibited drug.

3 Again, ladies and gentlemen, please keep in
4 mind all the calls that you have heard, all the evidence
5 you have seen about just what Jessica Medina, Raul Prieto
6 and Carlos Rivera knew about what was going on, here, in
7 particular, in relation to the distribution of drugs.
8 Medina knows about the spots, she is making collections,
9 she is making pick ups that she is bringing on as part of
10 their usual practice.

11 Raul Prieto is talking to Mr. Rivera about
12 selling a half O, I can move that half O. Do you know
13 where I could connect with someone so that I could sell
14 ecstasy, sell cocaine. He making his house available for
15 drug deals. He is making his house available for three
16 way calls about drugs with Bony, we submit to you. And
17 he is making his house available, though it doesn't apply
18 to distribution of drugs, he is making his house
19 available for a loaded gun sale.

20 Possession with intent to distribute,
21 similar deal. You have heard the elements. I leave it
22 to you, obviously, to consider whether or not there were
23 two instances here committed by each of these defendants
24 or any of the defendants when you are considering which
25 one might be guilty of this crime that they could be held

1 responsible for.

2 Conspiracy to distribute, extortion. You
3 heard from David Navarro about the practice of the gang
4 to extort criminal proceeds from drug dealers in Ontario
5 and how this was something that Carlos Rivera was engaged
6 in, and he was kicking up money to Armando Barajas.

7 Finally, illegal use of a communication
8 facility. You heard the elements to this crime. We
9 submit to you, ladies and gentlemen, that the phone calls
10 you heard demonstrate the illegal use of a communication
11 facility. These are phones being used to make phone
12 calls to talk about drugs, talk about the sale of drugs,
13 talk about getting to Nicolada, talk about selling a half
14 O, the dead bird, to talk about whether or not Robert
15 Tolson owes money. Chino has Jessica Medina out there to
16 make a pick up. All of these uses of the phone reflect
17 racketeering activity, and they all happened in the last
18 10 years. We are talking about 2009.

19 Just a couple more clips. We are in the
20 home stretch here, ladies and gentlemen. The phone is
21 the thing. Jessica Medina.

22 (Tape played.)

23 MR. DORE: Call the phone. She didn't answer the
24 phone. This is the day after Carlos Rivera is taken into
25 custody. If she didn't answer that phone, then no

1 one gets in touch with her, the deal dies. So what does
2 she do, she picks up the phone and uses it to keep the
3 drug business going.

4 (Tape played.)

5 MR. DORE: Slide the numbers to his little homey.
6 I submit to you, ladies and gentlemen, that what she is
7 saying is she is going to pass the phone onto another
8 gang member when she is done cleaning up the immediate
9 drug business. This is the day after Carlos Rivera was
10 taken into custody. And which you heard, for instance,
11 when she is running after Pat and running after Robert
12 Tolson for the money that is out there and owed to Carlos
13 Rivera.

14 So, finally, ladies and gentlemen, just to sum
15 up here, you heard from David Navarro that the Ontario
16 Black Angels control the drug business in Ontario, and
17 you heard that they tax people that they know were
18 dealing drugs. You also heard from David Navarro that no
19 one is bigger than the gang. Here is a guy who was on
20 the street who is a big deal, people are doing work for
21 him, but then he is in jail. And to show his loyalty, he
22 has got some guy demanding he get a tattoo, demanding
23 that he kick out his leg.

24 I submit to you, ladies and gentlemen, that
25 that suggests that no one is bigger than the gang. So if

1 you have got a business operating in Ontario, and you
2 have got a world controlled by the Black Angels and
3 Carlos Rivera is a member of the Black Angels and Carlos
4 Rivera is selling drugs is kicking up money, that he is
5 doing this for the gang, that he is a part of the gang
6 and that the gang is involved in this conduct.

7 And that Jessica Medina and Raul Prieto who
8 know him very well and have known him a very long time
9 know that this relates to the gang. Her name is next to
10 Ontario Black Angels name on Carlos Rivera's chest. Raul
11 Prieto has got the big cheese David Navarro at his house
12 making drug deals.

13 And he is with Carlos Rivera all the time. He
14 is with him in '08 when you heard those officers testify
15 about that event in 2008. You heard about calls and
16 things happening at Prieto's house. These guys are
17 tight. They know what is going on. And these guys, you
18 can hear from the calls, are not babies in the woods.
19 They know what is going on. There is no surprise in
20 their voices. There is no question. They know how this
21 works. And they are talking to other gang members and
22 engaging with Carlos Rivera and others to sell drugs and
23 participate in the Black Angels gang.

24 (Tape played.)

25 MR. DORE: No secret. Carlos Rivera makes it very

1 clear that he is a gang member. Raul Prieto understands
2 very well what Carlos Rivera is doing. Hit me with a
3 half O, I can push that.

4 And then last clip I am going to play for you,
5 ladies and gentlemen. Four days, five days after they
6 get popped for that half pound of methamphetamine,
7 Jessica Medina is on the phone and is she stopping or is
8 she continuing to engage in the business.

9 (Tape played.)

10 MR. DORE: Just wait a couple of days. She is the
11 one who says, hey, wait, let's not stop this thing, just
12 wait a couple of days, we will keep the business going
13 again. That is not someone who is unaware of this
14 business who is not aware of what is going on. That is
15 someone engaging in this drug business in Ontario in
16 Black Angels territory. Her house is Black Angels
17 territory where Carlos Rivera lives with her.

18 That is why, ladies and gentlemen, we ask that
19 you find the defendants guilty as charged. Thank you.

20 All right. Defense counsel.

21 Mr. Navarro, thank you.

22 MR. NAVARRO: Good afternoon, ladies and
23 gentlemen. It has been a long day. It has been a long
24 week since last week. Now, I want to start talking to
25 you briefly about the allegations made that my client was

1 paying up to the gang, that he was paying money up to
2 Mr. Barajas. That is really at the heart of the
3 government's RICO case, the RICO and the RICO conspiracy
4 case, especially the conspiracy.

5 The government has argued to you that my
6 client was a gang member. We can't deny that. The
7 government has argued to you that my client has Black
8 Angels tattoos. Those speak for themselves. My
9 client -- and the government has argued that because of
10 his association with the gang, he was paying money to a
11 Mr. Barajas. And we heard testimony from David Navarro
12 about that. And we heard no other testimony with regard
13 to that.

14 Now, in this case, the government played you a
15 number of telephone calls which were recorded over my
16 client's -- over the telephone, over the cell phone that
17 my client used. And, interestingly enough, there isn't a
18 single phone call in there, and I would have expected it
19 to be because as the government counsel pointed out to
20 you, my client didn't hide the fact of what he was doing.

21 And you can hear that in the phone calls, but
22 if, in fact, my client was paying money whether it was
23 himself or through a runner or somebody else to
24 Mr. Barajas, there probably would have been a phone call
25 about that because there will be no reason for Mr. Rivera

1 to hide that fact.

2 If he was selling narcotics, if he was coming
3 into possession of a weapon, whatever he was doing, he
4 was doing it out in the open. He wasn't hiding that
5 according to the government, but yet we don't have a
6 single phone call, the only link to Mr. Barajas and my
7 client comes from David Navarro.

8 And I will talk to you about David Navarro at
9 length because I am pretty good at math, and we had trial
10 started Tuesday, we really got into a couple of witnesses
11 Tuesday. We had a few witnesses Wednesday. And then the
12 last two days were dedicated to David Navarro so David
13 Navarro is an important part of the government's case and
14 government barely touched upon him which I find
15 interesting. And there is a reason why probably the
16 government didn't do that, and I am going to get to that
17 later on.

18 Now, this photograph has been shown to you
19 throughout this trial here. This is my client. That is
20 his Ontario Black Angels tattoo. There is his wife's
21 name. And I believe this is his daughter's name. Now,
22 having a tattoo of your wife or a child -- maybe some of
23 you have tattoos, I don't have any, but maybe some of you
24 do -- does that mean that somehow she is associated with
25 the gang and perhaps my client's child is as well? That

1 is plain silliness. There is nothing to link his tattoos
2 that are personal in nature, the ones of his family to
3 the gang.

4 The gang tattoos, they are what they are. He
5 put them on. When he put them on, he did it for obvious
6 reasons. He was showing his neighborhood, his barrio
7 where he was from because he was a gang member, and that
8 is fine. But the other tattoos, the ones that people get
9 on their arms and their ankles, whatever it might be, it
10 could be a you are a Dodger fan or something, whatever it
11 may be. Those are just personal in nature. They have
12 nothing to do with a RICO conspiracy. So I submit to you
13 that this is a -- it is a tattoo that is close to his
14 heart, probably, more than anything. He loves her, and
15 that is why he has it. For the same reason that many
16 other people have tattoos.

17 Now, Judge Wright spent a lot of time today
18 talking to you about those instructions. I think it was
19 about an hour. I timed him. It was kind of boring, but
20 we have to go through it. It is what it is. But in
21 those instructions, there was a lot of talk about the
22 crimes and I think Mr. Dore did a very good job in kind
23 of setting out to you what the elements of the crimes
24 were.

25 There is two of the alleged crimes are not in

1 dispute. My client Carlos Rivera is guilty of being a
2 felon in possession. He doesn't deny it. We never
3 denied that. There is no question that he came into
4 possession of a firearm. He talked about it afterwards.
5 It is clear as day, he is a felon. We have admitted
6 that. That is not an issue. So with regard to, I think
7 it is Count 23, we are not disputing that count.

8 With regard to Count No. 6 which is
9 distribution of 4.4-grams of methamphetamine, he is also
10 guilty of that charge as well. The evidence speaks for
11 itself. What I do want to focus on, though, are the
12 other charges in this case.

13 Now, the government has argued to you I think
14 it was the latter part of its argument that my client is
15 guilty of a RICO conspiracy because as he says, you know,
16 there was a -- there was an enterprise, this Black Angels
17 gang. We don't dispute that the Black Angels gang
18 exists. Can't argue something that is so obviously
19 incorrect.

20 Now, what I can argue to you, though, is that
21 Mr. Rivera's actions for the short period of time that he
22 was on the street because we know he was in custody in
23 '08. He was out of custody for a brief period of time in
24 '09, and then he went right back into custody in August
25 of '09. What I can say to you is that his conduct during

1 the time that he was out wasn't for the benefit of the
2 gang. It was for his own benefit.

3 Now, we heard Mr. Navarro testify about his
4 brother, and he didn't want to talk about his brother,
5 Cricket, that he stopped banging and did his own thing.
6 Well, what makes Cricket different than Chino as he is
7 called by the gang members? Why is it that Cricket can
8 stop banging and do his own thing but Chino is not.
9 Chino has to be paying up to Barajas. No phone calls.
10 Only Navarro's testimony.

11 If you listen to the phone calls, and there
12 was a phone call that wasn't played by Mr. Dore. There
13 is a phone call in which Mr. Rivera is talking about what
14 he has to do with this money that he is getting. And he
15 doesn't say, well, I got to pay my gang dues. No. He
16 doesn't say that. He doesn't say, well, I got to pay for
17 a legal defense fund for one of my Homeys in jail, or I
18 have got to send money to Barajas. He doesn't say
19 anything about that.

20 He is clear. He is pretty honest about what
21 he is trying to do. He says I need to buy shoes for my
22 kids, I need to pay the bills, I need to pay the rent.
23 Now, those are expenses that we all have, and I told you
24 at the beginning that we are sort of, in a weird way,
25 kind of in a reality show because we are getting reality

1 phone calls about a person who makes his living in an
2 unconventional way.

3 Now, don't judge him for that. I have never
4 been in prison myself. Never been arrested. Been
5 harassed maybe when I was younger, but it doesn't happen
6 to me anymore. But don't judge him because the money
7 that he gets is not through a regular job. He is doing
8 what he is doing to feed his family. He is not doing
9 what he is doing to give money to a gang. There is no
10 evidence whatsoever presented in this case that what my
11 client was doing was no different than what other people
12 do.

13 And I may have my own personal opinions of
14 that, but the reality is that if you listen to the phone
15 calls of what he was talking about, he is pretty open
16 about it. And when you listen to him talking to, whether
17 it is him talking to his wife or someone else talking to
18 his wife, what do we hear in the background? We hear
19 kids running around the house. There is four children in
20 the house.

21 Now, they are trying to raise a family the
22 best way that he knows how, and he is not doing it for
23 the benefit of any gang member. He is not doing it to
24 give Navarro the No. 3 guy in the gang money. He is
25 doing it to buy shoes, clothes, go to the movies, what

1 parents do with children.

2 That is an important fact for you to keep in
3 mind. I don't believe there is a pattern of racketeering
4 activity here for the benefit of the gang because it has
5 to be for the benefit of the enterprise. If someone is
6 selling narcotics, that is a different case. That is not
7 this case. So I believe that is an important fact.

8 Now, government counsel never talked about
9 this conspiracy to distribute heroin. There is no
10 evidence whatsoever that my client ever distributed
11 heroin. I think that was maybe mentioned by Mr. Navarro
12 that perhaps my client was aware that a Mr. Gil was
13 selling heroin. There was no phone calls whatsoever
14 between my client and Mr. Gil. I don't believe there
15 were any phone calls regarding my client or Mr. Rivera
16 talking to Mr. Gil about heroin presented in this case.
17 I submit to you that that speaks for itself.

18 Now, I want to talk to you about David
19 Navarro. Now, when he first took the stand, I believe
20 government counsel asked him questions about where he was
21 born, where he was raised and talked about, well, there
22 was all this gang activity going on when you were going
23 to the liquor store to buy candy. And I found that to be
24 very amusing based on my background and experience. I
25 found it amusing because when you go up around gang

1 members, you kind of know. When you are growing up on
2 the east side of LA, you know, you know the streets, you
3 know who the gang members are, you know who the wanna-be
4 gang members are.

5 Now, with regard to Mr. Navarro, the
6 government, I have to admire them for not trying to clean
7 him up, put him in a nice three-piece suit and pretend
8 that he is something different than what he actually is.
9 He is a gang member who, unfortunately, for a number of
10 reasons, joined the gang at a very young age, and he kind
11 of moved up the ranks. He was OVS. Then, he was Junior
12 Black Angels. Then he became a full-fledged member of
13 the Black Angels. We know all about his past. We know
14 he has been involved in a lot of criminal activity.

15 He didn't want to talk about, I think, the
16 three murders that he was associated with, the
17 one attempted murder of the African-American gentleman,
18 all the fightings, the intimidation, the shootings, the
19 graffiti, the extortion, the drug dealing, everything
20 that he has done. And yet he is the government's star
21 witness in this case. He is Defendant No. 3 out of 51.
22 He also told you was he was intercepted hundreds of times
23 if not maybe thousands in this case.

24 What did he do when he got arrested? He
25 decided to cooperate pretty fast. I think within

1 two months he was ready to sing like a bird. Now, he
2 wasn't an eight-year-old child who was exposed to gangs
3 going to a liquor store. He grew up in gangs. His older
4 brother, I believe, who is six years older than him was
5 also a member of the Black Angels. Now, I submit to you
6 that the testimony of Mr. Navarro, we just can't trust it
7 because of who he is, what he has done in his past and
8 what he will probably do in his future.

9 Now, I have always been told that you can tell
10 a lot about a person by where he has been. And that is
11 what my grandfather used to tell me. And I think that is
12 true. You can tell a lot about Mr. Navarro by where he
13 has been and what he has done.

14 Now, he was asked a number of questions about,
15 well, did you have inspirations to be to be in the
16 Mexican Mafia. And he lied about it. He said no. That
17 is a big lie. If you look at everything he done before,
18 he was trying to get the PHD in being in the Eme. He
19 rose within the gangs, he was way up in the gang, he was
20 No. 3. The two guys above him were both Eme. That is
21 what the testimony was. So for him to now say I didn't
22 really have aspirations to be in the Mexican Mafia, that
23 is not honest. Had he not been arrested, had he
24 continued and been on the street, probably would have
25 become Eme and then probably when he got arrested, he

1 would have cooperated and then he would have defected
2 from the Eme, but, again, I just look at him, I apply the
3 common sense that I have learned and I look at him and
4 the things he said, you know, they don't add up to me.

5 Now, he testified that he had no specific
6 knowledge of any crimes committed by Mr. Rivera. He did
7 say, well, Mr. Rivera paid taxes, but we can't
8 corroborate it one way or the other. I can't prove it,
9 and neither can the government. The government has to
10 prove it only through his testimony. And as I said it to
11 you, Mr. Barajas or Mr. Gil, there is no phone calls, and
12 you would expect there to be phone calls because this
13 case is based on phone calls against my client.

14 He testifies that he saw Mr. Rivera do drug
15 deals at Mr. Prieto's house. Well, he can say whatever
16 he wants to say, but there is no real evidence to
17 substantiate that. Talked about a possible carjacking
18 that may or may not have taken place. He testified that
19 he was aware, that my client was aware that heroin was
20 being sold. Again, we can't substantiate that in any
21 way.

22 He also indicated that Mr. Rivera admitted
23 that he was being taxed, that he was paying money
24 directly to Armando Barajas. Again, we have to take --
25 we have to take him at his word with this testimony. It

1 is interesting that I believe in this case, there were 20
2 witnesses, maybe 21 or 19. Every one of them was law
3 enforcement except for Mr. Navarro. Some of the officers
4 came in in their uniforms looked very nice, very
5 respectable.

6 So did Mr. Navarro. He came in in his
7 uniform, and to me that is important. Mr. Navarro will
8 say and do anything to help himself. He is looking at
9 spending the rest of his life in prison. He got the
10 numbers wrong. Like I said I'm pretty good at math. I
11 tried to help him a little bit, and he wasn't good at
12 math. That is fine. I understand that. I can't judge
13 him for that.

14 But he indicated, well, I am looking at about
15 17 to 22 years. That is not true. He was looking at a
16 life sentence, and he is going to do what cooperating
17 defendants do sometimes. He is going to do and say
18 whatever is asked of him to help the government. We know
19 about what he was really thinking about when he got
20 arrested. Wasn't thinking of his wife and kids. He was
21 thinking about smuggling narcotics into a jail facility
22 because that is what he does. That is what he did.

23 Now, you as the jurors have the final
24 decision in terms of which witnesses to believe, which
25 witnesses not to believe, and I think Judge Wright gave

1 you an instruction as Mr. Navarro was testifying about
2 Mr. Navarro's testimony. Why is Mr. Navarro here? Why
3 was he here? Why did we spend two days with him? He is
4 here because the government wants to win. And the
5 government wants to win, it appears to me, at any cost.
6 They will use a murderer, liar, drug dealer to help their
7 case. Doesn't matter. And it does matter. And you can
8 tell the government these kinds of witnesses are not
9 going to be allowed in these kinds of trials.

10 Now, I submit to you, ladies and gentlemen,
11 that Mr. Rivera -- and the trial was really about
12 Mr. Rivera. He is sitting in the back very quietly.
13 There is no question that he is a gang member. There is
14 no question he possessed a firearm and that he
15 distributed that small amount of narcotics.

16 I submit to you that whatever else he did
17 wasn't for the benefit of any gang. It surely wasn't for
18 the benefit of the Black Angels. He was doing something
19 similar to probably what Cricket was doing, doing his own
20 thing. And I know that because we haven't seen any other
21 evidence linking him to the activities of the gang. We
22 have seen, you know, what I guess Mr. Navarro testified,
23 but I don't give any credibility to anything he said
24 because of who he is and what he is trying to accomplish.
25 He is hoping to one day see his children and hoping that

1 Mr. Rivera doesn't see his own children. And I leave you
2 with that. Thank you.

3 THE COURT: All right. Thank you, Mr. Navarro.

4 Ladies and gentlemen, let's take another 10
5 minute break. Please remember the admonition. And when
6 we come back, we will hear our last closing statement.

7 (Recess from 12:24 to 1:03 p.m.)

8 (The following proceedings were held in the
9 presence of the jury:)

10 THE COURT: All right. Mr. Walsh.

11 MR. WALSH: Ladies and gentlemen, this is my
12 opportunity to give the closing argument on behalf of my
13 client, Jessica Medina. She is charged with four charges
14 in the indictment, a RICO crime, a RICO conspiracy, a
15 crime of conspiracy to distribute methamphetamine and the
16 crime of possession with intent to distribute
17 methamphetamine which is the amount of drugs that were
18 found in the car.

19 One of the things I don't think has been
20 explained to you up to now is what RICO stands for. It
21 is an acronym, and the long name for the statute is
22 Racketeer Influenced and Corrupt Organizations, and it
23 was a statute that was passed in the '60's to go after
24 the Cosa Nostra, the Italian Mafia and also to go after
25 racketeers that were influencing labor unions on the

1 waterfronts in New York City, and it has been expanded
2 and interpreted to apply to any type of corrupt
3 organization or criminal organization.

4 So in this case the RICO charges that and the
5 government alleges that the Black Angels is a criminal
6 enterprise and the charges that Ms. Medina participated
7 in the conduct of the affairs of the Black Angels
8 enterprise through a pattern of racketeering activity and
9 that Ms. Medina actually did in fact commit
10 two racketeering acts as a part of a pattern type of
11 crimes and committed as a part of her association with
12 the Black Angels enterprise.

13 And, then, the second charge of RICO
14 conspiracy is sort of summed up as this. The government
15 is alleging that Ms. Medina at some point in time entered
16 into a conspiracy or an agreement to violate the RICO
17 statute in that she agreed with others to conduct the
18 affairs of the enterprise which was the Black Angels gang
19 through a pattern of racketeering activity.

20 So I think that kind of summarizes, it
21 collapses everything down into one or two sentences. You
22 will have all the of the jury instructions with you back
23 during the course of your deliberations to go back and
24 look at the elements of these crimes, but it is
25 essentially operating a racketeering organization through

1 a pattern of, a continual pattern of crimes.

2 Now, in this case, the evidence hasn't shown
3 that that is what Ms. Medina has done. The real example
4 in this case that we have of someone who is operating a
5 racketeering activity is David Navarro, the government
6 witness that plead guilty to RICO conspiracy. He is
7 someone that violated the RICO statute clearly. He is a
8 member of the RICO enterprise, the Black Angels. He went
9 to meetings. He was the leader of the group at one point
10 in time.

11 He admitted paying dues to the organization,
12 and he admitted operating the organization, the Black
13 Angels through a pattern of racketeering activity or the
14 commission of a series of racketeering acts and crimes.
15 He said that he committed acts of extortion, committed
16 acts of assault, and he was involved in various murders.
17 And that was part of the regular activity of his
18 operating the Black Angels enterprise.

19 So, essentially, the enterprise is the
20 criminal group, and the RICO statute is asking, well, who
21 is running it. And David Navarro certainly for sure
22 would fall within that definition of RICO, but Jessica
23 Medina doesn't fall within -- with any rational view of
24 the law and the statutes in this case.

25 The evidence is clear that Jessica Medina is

1 not a member of the Black Angels. She is not a member of
2 any gang. She never attended any gang meetings. She
3 never paid any gang dues. She never collected any
4 extortion money for the gang.

5 And there are no witnesses that came in here
6 and testified that Jessica Medina actually sold them any
7 drugs in connection with her activities with the gang.
8 And David Navarro himself testified that Jessica Medina
9 is not a member of the Black Angels gang. She is
10 basically an outsider. And being a woman, we know from
11 David Navarro's testimony that women are not currently
12 members. They may have been sometime in the past, but
13 there are no current members of the Black Angels gang who
14 are women. So her being a woman almost places her
15 outside by virtue of that testimony.

16 And, essentially, she was no more running the
17 Black Angels gang than David Navarro's wife, and I think
18 a comparison to his wife is much more closer than a
19 comparison to him. Now, the government may argue and has
20 argued that she participated in racketeering acts of drug
21 possession and drug conspiracy, but the RICO crime itself
22 is not just committing racketeering acts. The RICO crime
23 is conducting the affairs and operating and running the
24 enterprise. And an isolated crime, if the government has
25 some proof that a person committed an isolated crime,

1 that doesn't prove they have committed a RICO violation.
2 A RICO violation is a much more substantial and much more
3 complicated building blocks that have to be established
4 before someone can be said to have committed a RICO
5 crime.

6 First of all, there has to be an enterprise, a
7 crime group, and the accused has to be a part of that
8 group, and the overwhelming evidence in this case is that
9 Jessica Medina is not a member of the alleged
10 racketeering enterprise that is in the indictment.

11 So I will be asking that after you review all
12 that and review the jury instructions that you return a
13 verdict of not guilty on the substantive racketeering
14 charge and also the charge of conspiracy to commit the
15 crime of RICO as alleged against Jessica Medina.

16 Now, one of the jury instructions says that if
17 you find that any defendant was not a member of the
18 charged conspiracy, then you must return a verdict of not
19 guilty even though the defendant has been a member of
20 some other conspiracy. And I think what that means is
21 that if some of you may think she is perhaps guilty of
22 the drug conspiracy, and that is different from the
23 racketeering conspiracy, then you have to vote not guilty
24 on the racketeering conspiracy and then proceed to
25 whether or not the evidence is guilty -- establishes her

1 guilt beyond a reasonable doubt for the drug conspiracy.

2 So let's look, then, at the two charges
3 concerning the drug offenses that are alleged against
4 Ms. Medina. Those are possession with intent to
5 distribute the 219-grams of methamphetamine that were
6 found on August 6 in the search of the red Acura that was
7 parked in front of their house and also an additional
8 crime of conspiracy to distribute methamphetamine.

9 Now, a charge of possessing the 219-grams of
10 methamphetamine has two elements. The government
11 basically has to prove beyond a reasonable doubt that she
12 knowingly possessed the methamphetamine and that she
13 possessed it with the specific intent to distribute it,
14 in other words, to sell it to someone.

15 And in this case, the evidence never
16 established that she possessed it, and there was no --
17 there is nothing in the wiretaps or the evidence
18 indicating that it was her intention to sell or
19 distribute the 219-grams.

20 The drugs were seized by the police from the
21 red Acura, police surveillance of the red Acura on the
22 night of the search. They never saw Jessica Medina prior
23 to entering the house. They never saw her go in the car.
24 They never saw her come out of the car. She was never
25 observed driving the red Acura. She was never observed

1 putting anything in the red Acura.

2 And all of the wiretap calls occurring before
3 the search of the red Acura make no mention of Jessica
4 Medina. She is not picked up on any of the telephone
5 calls, and so her relationship to the 219-grams is such
6 that it is not established at all by the evidence that
7 the government has presented.

8 There is no evidence that is showing that she
9 spoke about the 219-grams or expected its arrival. There
10 is no evidence that she had prior knowledge that it was
11 going to be placed in the car or that she had future
12 plans for the drugs. None of this is picked up on any
13 wiretap or through the testimony of any other witness
14 that was called by the government in this case, and
15 one of the witnesses, I think is very important on the
16 issue of possession and that is the fingerprint expert.

17 The fingerprint expert testified that all of
18 the latent fingerprints that were found on the plastic
19 container that was in this black box that was taken from
20 the car, all of those fingerprints were not Jessica
21 Medina's. So we have essentially concrete evidence that
22 she never had possession of the 219-grams of
23 methamphetamine.

24 And so the only evidence that the government
25 has is they are trying to say that she has possession is

1 the telephone calls. And, essentially, there is no
2 telephone call that says that that methamphetamine was
3 Ms. Medina's.

4 We have calls after the arrest of Carlos
5 Rivera in which she is calling people and telling them
6 that Carlos has been arrested and that they found
7 methamphetamine in the car. And in one of those calls,
8 she says they didn't even know what the amount of
9 methamphetamine was. And in another one of the calls,
10 she is overheard saying that she is describing the scene
11 to someone after the fact, and she is describing the
12 night of the search and the arrest and she is saying that
13 Chino had brought it into the house and when she learned
14 of it, she told him to get that stuff out of the house.

15 And then she made the following comment when
16 she is explaining it to a girlfriend or someone else on
17 the phone that she didn't want to lose the kids over what
18 Chino was doing. And this shows that the methamphetamine
19 was not hers. She didn't want it in the house. And she
20 objected to it being there.

21 Now, later, the police find the
22 methamphetamine in the car, and they arrest Carlos
23 Rivera. And then from these subsequent calls, we learn
24 that Ms. Medina has the key to the car in her pocket and
25 that she didn't voluntarily give it to the police. We

1 learn that from her calling a man whose nickname under
2 the wiretaps was Nacho, and he appeared to have been the
3 registered owner of the car. And there was a discussion
4 of what he could tell the police that might not connect
5 Carlos Rivera, her husband, to the car because the car is
6 where the drugs were found.

7 But this is not evidence that Ms. Medina was
8 possessing the drugs. There is no call in which she --
9 she is claiming that she wants Nacho to say the car isn't
10 hers. It is essentially a wife who is trying to present
11 a case being made against her husband, connecting him to
12 the drugs that are found in the car and having him being
13 convicted, prosecuted and sent to prison over this.

14 She is not trying to protect herself. She is
15 not indicating in those calls that the drugs in the car
16 are hers, and it doesn't establish either her possession
17 of those drugs in the car or any intent or plan on her
18 part to do something with the drugs in the future. And,
19 in fact, at this point in time, there wasn't anything
20 when she is calling and telling the registered owner
21 asking him is there anything he could say that could help
22 the situation. At that point in time, the drugs aren't
23 around anymore. They have already been seized by the
24 police, and so there couldn't be any intent for her to do
25 something in the future established from that particular

1 call. And, of course, we don't have any calls earlier
2 prior to the seizure.

3 Now, the last charge, then, is a charge of
4 conspiracy to distribute methamphetamine. It also -- it
5 charges conspiracy to distribute methamphetamine and
6 heroin, but we haven't really heard anything about
7 heroin. So I think what you really have to focus on is
8 whether or not the government has proven beyond a
9 reasonable doubt that Ms. Medina entered into a
10 conspiracy to distribute methamphetamine. The government
11 claims that they have proven that by the wiretap
12 telephone calls, but these calls don't prove that she
13 actually is guilty of the crime of conspiracy to
14 distribute methamphetamine.

15 Now, the jury instructions that you have heard
16 this morning and you will have available to you during
17 your deliberations state that conspiracy is an agreement
18 between two or more persons to commit a crime, to commit
19 one or more crimes. So it is an agreement to do
20 something unlawful in the future.

21 And you have to carefully review the evidence
22 based upon what the law is. Specifically, the jury
23 instructions say that the two elements of the charge
24 against Ms. Medina require that there must be proof
25 beyond a reasonable doubt that there was an agreement

1 between two or more persons to distribute methamphetamine
2 or heroin. And, two, the accused joined the agreement
3 knowing its purpose and intending to accomplish that
4 purpose.

5 So you can't find Ms. Medina guilty unless the
6 government has proven both of those elements beyond a
7 reasonable doubt. And the jury instructions state that
8 proof beyond a reasonable doubt is such proof of a
9 convincing character that a reasonable person would not
10 hesitate to rely upon and act upon it in the most
11 important of their affairs.

12 So it is talking about it is so convincing
13 that you unhesitantly can say, yes, this has been proven
14 to me. Almost, it is a very, very high standard of
15 proof. It is not absolute proof, but it is a very high
16 standard of proof before you can return a verdict of
17 guilty in a criminal case.

18 And it requires the jury to essentially change
19 the way that they think about making decisions. It
20 doesn't allow you, for example, to return a verdict of
21 guilty if the evidence just shows a strong suspicion that
22 Ms. Medina is guilty of something, but it doesn't show
23 proof beyond a reasonable doubt.

24 And it would be wrong for you to return a
25 verdict if you just feel that, oh, I have a strong

1 suspicion that maybe she was involved in here, but I
2 can't really put my finger on what it is that she has
3 done. You must return a verdict of not guilty. Because
4 a verdict of not guilty simply means that the case has
5 not been proven. It means not proven beyond a reasonable
6 doubt.

7 I would like to talk about some of the calls.
8 I won't be able to talk about all of them because there
9 were so many, but I think some of the calls I can
10 highlight in my discussions with you. And one of the
11 most important calls I suppose is the one that appears in
12 David Navarro's plea bargain. In there, as a part of his
13 facts of his crime, he states that he received a call
14 from Jessica Medina advising him that Carlos Rivera got
15 arrested. And that is in his plea agreement.

16 And that is the only mention of Jessica Medina
17 in David Navarro's plea agreement, but you see that
18 doesn't really prove a crime. It is just a
19 communication. In the call, she first advised David
20 Navarro that Carlos Rivera got arrested the other night,
21 and she says the police found narcotics in the car, but
22 in the call she says she didn't know what kind of
23 narcotics or even what amount and the reason is because
24 it wasn't her narcotics.

25 The quote that I have that I wrote down when I

1 was listening to the call was they found narcotics but I
2 don't know how much or whatever. And that she says in
3 the call that Carlos came home with money, another person
4 came by bringing something, and I am like get that out of
5 here, I can't have my kids taken away because of that.

6 So it doesn't show that she is engaging in a
7 conspiracy to distribute those drugs or any drugs with
8 Carlos Rivera or anyone. In fact, it shows just the
9 opposite. It shows that she doesn't want the drugs in
10 the home and that she doesn't even know the amount of the
11 drugs or the identity of the drugs.

12 Another call that the government played was a
13 call in which Jessica Medina was talking to a girlfriend,
14 Gaby. And she explained to Gaby on the telephone that
15 Carlos had been recently arrested and that the police had
16 brought in a drug-sniffing dog, and they brought the dog
17 to the car. And in listening to that and she is
18 explaining it, part of the explanation that she gave, and
19 I wrote it down as I was listening to it, is she says now
20 I am finding out it is not a little amount, it was a
21 large amount. And it is an indication in that call when
22 she was talking to Gaby reporting about the arrest that
23 she had no idea that it was a large amount.

24 She suspected that -- she probably suspected
25 that he was bringing home something illegal and told him

1 to get it out of the house, but she had no idea it was a
2 large amount.

3 And, again, it proves that she has -- she is
4 lacking in basic information on the day of the search as
5 to the amount and the identity of the drugs, and, in
6 fact, her voice indicates that she was surprised later
7 when she found out that it was a lot of -- a larger
8 quantity. And the surprise was because it wasn't her
9 drugs. She wasn't in possession of the drugs. She
10 wasn't a part of any conspiracy to distribute.

11 I believe in the phone call with Gaby, though,
12 she did say that she told the police that she didn't know
13 where the keys to the car were. And then she was telling
14 Gaby that the keys were actually in her pocket. And so
15 the police then had to get a Slim Jim and call AAA and
16 break into the car, open it up in order to actually get
17 access to the car and seize the evidence. But her reason
18 for doing that, I think, could easily be explained as her
19 attempts to try and help Carlos not be arrested and
20 charged with the drugs in the car.

21 There was another telephone call in which she
22 is talking to the registered owner of the car, Nacho, and
23 there was some discussion of what Nacho could tell the
24 police that wouldn't connect Carlos to the car and the
25 drugs. And, once again, what is the reasonable

1 explanation of why she is doing this? Well, Carlos is
2 the father of her children, and any wife would want to
3 help her husband not get arrested. I am sure it is a
4 common occurrence that you either know someone or there
5 is someone in your family that gets arrested, for
6 example, if you had a son that was arrested for driving
7 under the influence, a parent would immediately try to do
8 whatever they can to try to help the son.

9 And that is kind of a human nature response
10 that everybody has with family, and that is what is going
11 on here. She is calling the registered owner and
12 proposing that maybe he could say something that could
13 steer the police away from Carlos' connection with the
14 car.

15 Now, that doesn't make her joining a
16 conspiracy to distribute the 219-grams of
17 methamphetamine. Those grams of methamphetamine are no
18 longer around by the time she is talking to Nacho. They
19 were seized by the police. They were in the evidence
20 locker. So she couldn't be trying to distribute or have
21 an intent to distribute or join a conspiracy to
22 distribute when she is having this conversation with
23 Nacho afterwards.

24 And, essentially, it is just the actions of a
25 wife trying to do something to stop the police from

1 taking her husband to jail. It doesn't make her a drug
2 trafficker, and it doesn't make her a drug conspiracy.
3 She is essentially acting in a desperate manner, thinking
4 desperate thoughts that just happen to be now
5 tape-recorded and listened into by the police. But it is
6 not a crime to be desperate and look for desperate
7 solutions for unusual situations.

8 And what evidence is there that anything was
9 done? I mean, did Nacho sound like he was going to go to
10 the police and say that is my car? It was just the
11 opposite. Nacho was saying, well, I don't want to say it
12 was my car. So this desperate conversation essentially
13 led nowhere, and it isn't proof that she is a member of a
14 conspiracy.

15 And in terms of hiding the key from the
16 police, most people, I think if the police were
17 conducting a search on your premises, and they asked for
18 the keys to your car, you would turn them over. But
19 Ms. Medina didn't do that. And so then the question is,
20 well, is that evidence of her being a member of a
21 conspiracy to distribute methamphetamine, and I would say
22 no it is not. The police were there because they were
23 conducting a parole search of Carlos Rivera, and the only
24 evidence was that only Carlos Rivera was on parole.

25 So if they are coming in to conduct a parole

1 search, does that mean they can search Jessica Medina who
2 is not on parole? That doesn't seem logical. So it
3 seems like the parole search allowed them to come in
4 search Carlos Rivera, search the room where Carlos Rivera
5 had his stuff, and that is it.

6 That was the end of their lawful authority
7 because the officers testified they didn't have a search
8 warrant for the house. And so their only ability to
9 conduct a full fledged sweep, search of the house is
10 beyond the scope of their search warrant or beyond the
11 scope of their parole search, would be if they had a
12 search warrant which they didn't. So that means that
13 when they asked Ms. Medina or demanded her to turn over
14 everything that was in her pockets, they didn't really
15 have the authority to do that, and that is why they
16 didn't do it.

17 And the fact that she didn't on her own turn
18 it over simply means that she was standing on her rights
19 under the Fourth Amendment not to be subject to search
20 unless they had lawful, a lawful police warrant or some
21 lawful reason like a parole search which they didn't have
22 for her.

23 So is this, then, the evidence of her not
24 turning over the key, hiding the key necessarily evidence
25 that she is a member of a conspiracy? No. Because her

1 not turning over the key, although it sounds bad, was not
2 a criminal act. It wasn't a criminal act. If she had
3 taken the key and flushed it down the toilet, then that
4 would have been an affirmative act of obstructing
5 justice. But her simply saying I don't know where the
6 key is when she secretly had it in her pocket, that is
7 not evidence of ger guilt of a conspiracy.

8 THE COURT: Mr. Walsh.

9 MR. WALSH: Yes, your Honor. Five minutes.

10 Now, there were other conversations that
11 Ms. Medina had with various people that knew Carlos
12 before he was arrested, and she was calling and having
13 all sorts of conversations with them. Most of it
14 surrounded the fact that she was telling them that Carlos
15 had been arrested. She was hoping that he would just get
16 a parole violation, get six months, and he would be back
17 home which of course didn't happen. And then she told
18 them about the search.

19 And some of these conversations touched on
20 criminal topics and some of the conversations touched on
21 criminal topics related to drugs, but in all of these
22 conversations, Jessica Medina never agreed to do
23 anything. She never agreed to commit a crime. She never
24 agreed to distribute methamphetamine. And she took no
25 actions that were tied to these specific telephone call

1 conversations.

2 Take, for example, the conversation in which
3 she is talking to Robert asking her to pay money that is
4 owed, that Carlos -- that he owes Carlos. Now, there is
5 no evidence as to what the money was owed for. The
6 government has argued it is drug money, but that is not
7 what the call says. When you are listening to the call,
8 it just says he owes money to Carlos. And so the
9 government can't add words to the dialog and say, well,
10 no, we are going to put the word drug in there, and this
11 is evidence of an attempt to convict Ms. Medina on the
12 basis of a simple call in which she is asking for money.

13 And she also talked with Mr. Venegas asking
14 what he could do to get Robert and Patrick to pay money.
15 Once again, there was no discussion of why the debt was
16 owed or under what circumstances the money had to be
17 paid. And all Ms. Medina wanted was to collect money
18 that was owed to Carlos because Carlos was in jail, and
19 she told Venegas in the call that she needed money
20 because her kids needed clothes because school started on
21 Monday.

22 And, in fact, there is no evidence that anyone
23 ever paid her any money. It was just an attempt on her
24 part to try and collect debts, and there is no
25 explanation as to why the money was owed or, in fact,

1 even if the money was paid. And this is not evidence of
2 a conspiracy to distribute methamphetamine. There is no
3 mention of methamphetamine in the calls, and there is no
4 mention of Ms. Medina doing anything in connection with
5 methamphetamine as a result of those calls. These are
6 simply discussions trying to obtain money because Carlos
7 Rivera was in custody.

8 Now, there were other discussions between
9 Ms. Medina and Francisco Venegas, between Ms. Medina and
10 other people in which there was some discussions about
11 someone could move this or someone is available to help
12 with this and it is really too hot and maybe nobody
13 should be doing anything. But what exactly is she saying
14 that she is going to do? What exactly is she saying on
15 these calls that she agreed to? And the answer is
16 nothing. She is not agreeing to do anything.

17 Other people are telling her about what they
18 are doing, and she is listening in and she is learning
19 about it and she is interested. But she never decides to
20 do anything. She never agrees to commit a crime. There
21 is no evidence that the police conducted further
22 surveillance of Ms. Medina around the time of these
23 calls. There is no police stops of Ms. Medina where she
24 had additional drugs in her pocket. No police officer
25 saw an exchange of items on the street corner with

1 Ms. Medina peddling drugs, and there is no is seizure.

2 So essentially her job was to be raising the
3 kids, and these telephone conversations indicate that she
4 was talking about possible criminal activities of other
5 people. But that is not what she is charged with. She
6 is not charged with having criminal thoughts or having
7 discussions with other people that may be engaged in
8 criminal conduct. She is charged with a specific crime,
9 conspiracy to distribute methamphetamine. It requires an
10 agreement to do that, an agreement to go out and sell
11 methamphetamine and with the intent to distribute it.
12 And these telephone calls do not prove her guilt of those
13 charges.

14 And, essentially, what this case comes down to
15 is the fact that Jessica Medina may have been near
16 criminal activity and may have known that criminal
17 activity was going on around her, but she never
18 personally joined in the criminal activity and should be
19 found not guilty of the charge of conspiracy to
20 distribute methamphetamine.

21 THE COURT: Thank you, Mr. Walsh.

22 Mr. Cephas.

23 MR. CEPHAS: Thank you, your Honor.

24 1:33. I am going to try to finish by 2:03. I
25 may talk a little quick because I don't want to run out

1 on of time and miss out on anything.

2 Initially, I want to apologize to any of you
3 who may have seen me in the hallway and I ignored you
4 acted like I didn't know you. I am not supposed to talk
5 to you as the judge informed you. It is not that I don't
6 care who you are. It is awkward. It is awkward for all
7 of us to see you. I don't enjoy sitting this way facing
8 you. I never know should I look at the jurors. Should I
9 not look at them. Are they going to think I'm trying to
10 intimidate them. I am not. And that is why I generally
11 don't look at you during the trial. Again, it is not
12 that I don't care, I just don't know how to act. I don't
13 know if it helps me or hurts me so I try not to look.

14 Now, this is a criminal case. In a criminal
15 case, you are tasked to determine guilt beyond a
16 reasonable doubt. Some of you may have been on civil
17 cases before and civil trials, excuse me, where the
18 standard was preponderance of the evidence. It is a much
19 different standard. It is just is something more likely
20 or less likely to have happened. That is not the
21 standard we have in criminal cases.

22 And many of you, I am sure, watch TV. Some of
23 you or maybe all of you have watched Law and Order, have
24 watched other legal shows on TV, and you came into the
25 courtroom expecting this trial to be like those. And if

1 you watch Law and Order, the defense attorneys always
2 have more information than the prosecutors. McCoy is
3 always turning to his assistant, how come we didn't know
4 that. He is always upset that the defense attorneys knew
5 everything.

6 And I am always wondering what world is that?
7 What world do they live in where the defense attorneys
8 have the right to somehow subpoena all the government
9 witnesses beforehand and talk to them? We don't have
10 that right. We don't have the right to take their
11 depositions before court. We don't know if they are
12 going to make up something completely new when they are
13 up there on the stand.

14 You may have heard, you know, a statement
15 sometime in the past where you have, the attorneys are
16 told don't ask a question you don't know the answer to.
17 Well, as a defense attorney, it is very difficult to ask
18 questions when you haven't had an opportunity to question
19 the witnesses beforehand. And we wanted to make sure you
20 understood that, and that is why we made it clear.

21 We asked, you know, the police officers over
22 and over again, have you met with us, have you talked to
23 us. No, they haven't. We didn't know what they were
24 going to say. And it is dangerous to ask them because
25 they can make things up. And how do you prove a

1 negative.

2 If an officer says my client was in the grassy
3 knoll when JFK was killed, how do I disprove that? I
4 don't. And so I have to be careful. And because I have
5 to be careful, you have to be careful. And you cannot
6 find my client or any of the other defendants guilty
7 unless you are convinced beyond a reasonable doubt
8 because this isn't a civil case where it is just more
9 likely than not.

10 Now, there was some mention to a few
11 stipulations, and I just want to make sure you understand
12 there was a stipulation that a firearm is a firearm, it
13 traveled in interstate commerce. My client is not
14 charged with that. He is not agreeing that it is a
15 crime. He is just agreeing that it is a firearm and it
16 traveled in interstate commerce.

17 We all signed a stipulation saying that the
18 drugs were drugs. None of us were agreeing by signing
19 that stipulation that we were selling those drugs --
20 excuse me -- that the defendants were selling those drugs
21 and possessed them. We just didn't want to force the
22 government to have to put on witnesses proving what we
23 concede. They were drugs.

24 So before I get into some of the arguments,
25 I just want to summarize some of the testimony that

1 related to my client over the last week.

2 Officer Erdem Gorgulu testified about graffiti
3 in the prison in San Bernardino jail, and he said that
4 apparently Mr. Vega had written it. And he was asked
5 would you have written him up and would it have gone into
6 his file. His answer, it would have, yes. And would you
7 have taken a photo at the time you did the write-up?
8 Excuse me. And you would have taken a photo at the time
9 you did the write-up? Of course, I would. Then he was
10 asked, you claim Mr. Prieto, you saw Mr. Prieto writing
11 Crooks and Ontario, but you didn't write him up. His
12 answer, no, I didn't. Question, and you didn't take a
13 photo of that. His answer, no, I didn't.

14 Michael Precup testified that he had reviewed
15 several thousand phone calls -- excuse me -- that they
16 had recorded several thousand phone calls. You have
17 heard two related to my client.

18 Officer Olivera and Officer Ahmed testified
19 about an incident where my client allegedly said, hey, I
20 don't tag anymore, I don't tag, but then he said but I am
21 OVS. Doesn't make any sense. It is inconsistent. In
22 that neighborhood with these police, you don't admit, you
23 don't admit that. And I asked Officer Olvera, on the
24 date of the incident you recorded statements of
25 Mr. Navarro, Mr. Nunez, Ms. Jimenez and Mr. Rivera; isn't

1 that correct. That's correct. You recorded all of those
2 states on your digital recorder; correct? Correct. You
3 did not record any statements of Mr. Prieto; is that
4 correct? I cannot recall if I did or did not.

5 If he had recorded -- if Mr. Prieto had said I
6 am OVS, Officer Ahmed or Officer Olvera would have
7 recorded that statement. It wasn't recorded because it
8 didn't happen. Officer Willemstyn was asked about a
9 recording, Exhibit 100A, second page of the transcript,
10 where Mr. Rivera said I was with him and a couple of
11 other friends, fool, just regular cats. And later on, on
12 Page 3, Mr. Rivera said I wasn't around no gang members.

13 Mr. Navarro testified for two days as you
14 recall, and he was asked did Carlos Rivera to your
15 knowledge join the gang as an OVS member. Yes. How do
16 you know that? Because when I met him he was an OVS
17 member. Did he ever hold a leadership position in the
18 gang? Yes. What position was that? The president of
19 OVS. He is speaking about Mr. Rivera. He is speaking
20 about David Hernandez. He said he had spoken to David
21 Hernandez hundreds of times.

22 He was questioned about Mr. Prieto. Question,
23 was he ever called to do anything for the gang? Answer,
24 no. Mr. Prieto was never asked to do anything for the
25 gang. He was asked additional questions about

1 Mr. Prieto. Have you heard of defendant Prieto being
2 associated with any tagging crews prior to being OVS gang
3 member? Answer, yes. Question, what tagging crew have
4 you heard that he belongs to or belonged to? Answer,
5 KMR. What is KMR? Answer, tagging crew. Question, are
6 they rivals with the Black Angels? Answer, no.
7 Question, how could defendant Prieto become a member of
8 OVS if he was a tagging crew member? Answer, he would
9 have to stop claiming the tagging crew and start claiming
10 the gang.

11 He was asked was defendant Prieto authorized
12 to claim that he was an OVS gang member prior to 2010?
13 Answer, no. What would have happened if he found out
14 that he was claiming that he was an OVS gang member?
15 Answer, probably would have beat him.

16 Ms. El-Amamy asked Mr. Navarro:

17 "Q Did you hear him say something like just regular cats?

18 "A Yes.

19 "Q What does that mean?

20 "A Average people, not gang members.

21 and that was related to Exhibit 77A.

22 He was later asked:

23 "Q Did you ever use your telephone to do gang business with
24 defendant Prieto?

25 "A No.

1 "Q Why is that?

2 "A I never spoke with him on the phone.

3 "Q Why?

4 "A I just, I didn't have his phone number. He didn't have
5 my phone number, and we really didn't talk or hang out
6 unless Carlos was there with us.

7 He was asked about Robert Tolson.

8 "Q Do you know what relationship Robert Tolson has to
9 defendant Rivera?

10 "A From my knowledge, he was one of his runners.

11 "Q What is a runner?

12 "A A person that sells drugs for him.

13 "Q And was this individual who was the runner as you
14 described for defendant Rivera?

15 "A Yes.

16 "Q All right. Is Mr. Tolson a member of OVS?

17 "A No.

18 He was asked:

19 "Q What is the typical age for becoming --

20 Excuse me. He was asked: In one of those meetings you told
21 them, referring to the government, that the typical age for
22 becoming an OVS member is people of high school age;
23 correct?

24 "A Yes.

25 He was asked: You knew you had to put in work to move up to

#15101

1 become a junior Black Angels?

2 "A Yes.

3 He was asked:

4 "Q And one of the rules of the gang is don't talk to law
5 enforcement; correct?

6 "A Yes.

7 "Q Again, with Mr. Navarro, to your knowledge, Mr. Prieto
8 didn't commit any crimes for OVS; correct?

9 "A Yes.

10 "Q And he didn't commit any crimes to your knowledge for the
11 Black Angels; isn't that right?

12 "A Yes.

13 "Q Yes, that is correct?

14 "A Yes

15 "Q And I believe you said the gang never asked him to do
16 anything; isn't that right?

17 "A Yes.

18 He was asked about Mr. Rivera:

19 "Q Treated him like a little brother?

20 "A Yes.

21 "Q And before you were all arrested in 2010, Rivera kept
22 Prieto out of Black Angel business; correct?

23 "A From my knowledge, yes.

24 He was asked about the more than 50 phone
25 calls and that he had only heard two that related to

1 Mr. Prieto.

2 Now, as you know, there are six charges
3 against Mr. Rivera, there are four charges against
4 Ms. Medina. There are only two charges against my
5 client, Raul Prieto, two conspiracy charges. The same
6 two counts that David Navarro is being charged with, RICO
7 conspiracy and drugs, specifically methamphetamine.

8 Well, you heard the government argue in its
9 close that it doesn't matter if Raul Prieto was a gang
10 member. It doesn't matter to this case. Well, if it
11 doesn't matter, why did they waste so much time
12 trying to prove to you that he was a gang member? Why
13 did they waste so much time trying to prove to you that
14 he joined the gang?

15 And it was after April of 2010. The
16 indictment only goes to April, 2010. Mr. Navarro
17 conceded that Mr. Prieto didn't get to San Bernardino
18 jail until June or sometime thereafter. Navarro started
19 cooperating in August. So, supposedly, sometime between
20 June and August, Mr. Prieto decided to become a member of
21 the OVS and immediately become the OG of OVS because he
22 is far and away would be the oldest one in a typical high
23 school gang.

24 He didn't put in any work. He didn't get
25 jumped in. Mr. Navarro even said that you have to get

1 jumped in a second time to become a junior Black Angel.
2 He didn't have any tats. He didn't have any gang tats.
3 Well, now, they say it is not important. But they spent
4 so much time trying to show you pictures of gang tats,
5 gang tattoos. Excuse me. And you saw a lot of those
6 pictures, but none of this were them were of my client.

7 Mr. Rivera, when he didn't know he was being
8 recorded, was asked who are you hanging out with.
9 Regular cats, not gang members. And he was referring to
10 Raul Prieto and other individuals who were at
11 Mrs. Prieto's house. That is not Raul Prieto's house.
12 It is Velia Prieto's house. It is his mother's house.
13 He lives there.

14 To be an associate of a gang, the government
15 told you, quote, knowingly aids or furthers the
16 enterprise, end of quote. Well, did you see any or hear
17 any evidence that Mr. Prieto knowingly aided the
18 enterprise which would make him liable for RICO? What
19 did Navarro say? He said we never asked Prieto to do
20 anything. He said, to his knowledge, Mr. Prieto never
21 engaged in any crimes for the gang. He said that
22 Mr. Rivera kept Mr. Prieto out of gang business.

23 Now, Mr. Rivera, as Mr. Navarro admitted, was
24 the president of OVS. He wasn't just a regular gang
25 member for a significant period of time, he was the

1 president of OVS. And he has known Paul Prieto since
2 they were little kids since before they even thought
3 about being a gang member. He could have made him an
4 OSVS member when he was president, but as Mr. Navarro
5 said, he kept him out of the gang despite the fact they
6 were friends. It didn't mean that Mr. Prieto was going
7 to become an OVS member. And they were friends for all
8 these years, and Mr. Rivera never did a thing to bring
9 them into the gang.

10 And as Navarro said, he did just the opposite.
11 He kept them out of the gang. He was very protective of
12 them. He didn't want him in it, but, now, Mr. Navarro
13 says, oh, but if it will help my cooperation and get me a
14 lower sentence, I will just say he joined after we all
15 got arrested. I don't have any proof, but trust me, I
16 wouldn't lie to you. Well, and where is the proof?
17 There isn't any. And it doesn't make sense.

18 Let's look at what Mr. Navarro is responsible
19 for in terms of graffiti. That is his. This is his.
20 That is what Mr. Navarro and other Black Angels gang
21 members did as part of their membership in the gang. But
22 that is not what Mr. Prieto did. Mr. Navarro admitted
23 that this is what Raul Prieto did. And that is what he
24 did right up until he was arrested in this case. That is
25 how he expressed himself. Is it a crime to paint on

1 these surfaces? Probably is. I don't know who owns
2 these walls, but my client isn't charged with graffiti.
3 He is not charged with painting murals around town.

4 You heard thousands of calls. Excuse me. You
5 heard that there were thousands of calls but two related
6 to Mr. Prieto. You heard calls after calls with Rivera
7 and Venegas or Tolson showing that Tolson was a runner,
8 and, yes, I concede you don't have to be a gang member to
9 be associated with it. How do I know that? Well, Tolson
10 wasn't a gang member, but look at the things that Tolson
11 did. He was a runner. And they had evidence of him
12 making phone calls, talking about what he was trying to
13 do.

14 There are phone calls with David Hernandez who
15 also wasn't a gang member, but he was trying to sell a
16 gun, and he was on the phone talking about selling that
17 gun. There was a statement about a phone call where a
18 cousin is referred to in the government's close. What
19 cousin? Jessie Prieto? Henry Prieto? Raul Prieto? Or
20 some other different cousin? Did the government prove
21 beyond a reasonable doubt that the cousin referred to by
22 Jessica Medina was even a Prieto? Did the government
23 prove beyond a reasonable doubt that Raul Prieto is the
24 cousin she was referring to? Is it possible that she was
25 referring to Raul Prieto? Yes. It is possible, but it

1 is not even close, not even close on the same planet as
2 beyond a reasonable doubt.

3 What happened after August 6th, 2009?
4 Mr. Rivera's phone was blowing up but not with Raul
5 Prieto. You listened to several exhibits, Exhibit 92,
6 92A, Jessica Medina and someone named Junior. Exhibit
7 94, someone named Jorge. Exhibit 95, someone named
8 Ignacia. Exhibit 111, someone named Cocky. And Exhibit
9 112, someone named Robert and also references to Patrick.

10 These people may have been involved in a drug
11 conspiracy, and they may have expected some of the drugs
12 that were seized on August 6th and that is why less than
13 24 hours later on August 7th, they are on the phone.
14 They wanted to know what was going on. But there were no
15 calls to Raul Prieto. There were no calls from Raul
16 Prieto saying, hey, what is up, where is my meth? Where
17 are the drugs that were promised to me? Why? Because
18 nothing, nothing was promised to him.

19 Did his friend Rivera agree to help him?
20 Sure, he did. Did he say exactly how he was going to
21 help him? No, he didn't. He said, quote, I am strong, I
22 can help you out. He knew Prieto needed money. He has
23 been going out of his way to protect Raul Prieto for
24 years. If he wanted to use Raul Prieto as a runner, that
25 would have happened a long time ago. And you would have

1 heard phone calls between him and Raul Prieto talking
2 about quantities, talking about price, making it clear
3 that Raul was selling drugs for him. And you didn't see
4 or hear any of that. The government didn't present that.

5 What did they present? They presented
6 evidence of a guy who wanted to be like one of the guys,
7 and he talks about other drugs. You know anybody who
8 wants to buy any soda. Well, the Black Angels, they are
9 not selling cocaine. They are not dealing with ecstasy.
10 This is not a case about ecstasy or cocaine.

11 The jury instructions don't allow you to
12 convict for a conspiracy to sell ecstasy or cocaine.
13 That is not an issue in this case. It is meth or heroin.
14 There is no heroin in this case, clearly, with respect to
15 Mr. Prieto. I would argue there is no heroin in this
16 case with any defendant.

17 But what what is Rivera's response? He is
18 like, yeah, whatever, I will see what is up, when he
19 talks about soda. He doesn't seem to really care. Then
20 Prieto is like what about E, you know anybody who wants
21 to buy some E? Rivera is like, what? Ecstasy. Again,
22 he is like, you know, maybe, whatever. But he is not --
23 he is not that serious about it.

24 You know, he doesn't deal, there is no
25 evidence that he deals with ecstasy or with cocaine. And

1 so in the conversation, is there anything that says or
2 suggests that Mr. Prieto knows Rivera is dealing meth or
3 has meth? And I am asking beyond a reasonable doubt.

4 There is a reference, hey, I got some bomb,
5 fool. My shit is guaranteed. Show me a half O, I will
6 move it. Well, move what? You are allowed to use
7 circumstantial evidence, and there has been
8 circumstantial evidence with respect to other people like
9 Tolson and like Hernandez that suggest, you know, Tolson
10 knew what he had was meth. There is no circumstantial
11 evidence showing that Mr. Prieto knew that they were
12 talking about meth, about ecstasy, about marijuana.

13 Did he want something? Yeah. It seems like
14 he wanted something. Or was he just trying to sound like
15 a big guy? Yeah, maybe so. But this is a guy who had
16 never been used or at least the government has no
17 testimony even from Mr. Navarro that Mr. Prieto has ever
18 been used as a runner. And yet they are saying that you
19 need to assume beyond a reasonable doubt that Mr. Prieto,
20 special needs and all, knew that what Rivera was talking
21 about was methamphetamine. Is it possible he knew about
22 meth, that he knew they were talking about meth. Yeah.
23 That is possible. It is possible. There is not evidence
24 beyond a reasonable doubt that Mr. Prieto knew they were
25 talking about meth.

1 And that is the same with respect to the other
2 call, 89A. Who is this? It is Chino. You called me;
3 right? I called you? Yeah. You called me 5, 10 minutes
4 ago. Really? It is clear Mr. Prieto is confused. He is
5 confused easily. He goes on to say I have got a robbery
6 to do. And his friend, who has been protecting him for
7 years says, no, that is dumb. I have got you.

8 Well, what does he got him with? Well, you
9 know, Mr. Prieto is I have something, a half a bird.
10 Again, a half of a bird of what? Does he have a half a
11 bird of marijuana? Does he have a half a bird of
12 ecstasy. Did the government put on any evidence that
13 show that Mr. Prieto knew what Mr. Rivera was talking
14 about. He was talking about ecstasy, he was talking
15 about cocaine. We know these people smoked marijuana.
16 He didn't care. He just wanted to be one of the guys.
17 Whatever it is, yeah, give it to me.

18 And, now, they are asking you to find beyond a
19 reasonable doubt that he knew that it was meth and to
20 find that he knew he was conspiring to sell meth. And he
21 is like, hey, I can push that, I can push that. You
22 don't hear Mr. Tolson trying to convince him that he can
23 push it. You don't hear any of the other people who are
24 dealing trying to convince their co-conspirators, hey, I
25 am a big guy, I can do it, you know, give me a chance.

1 And, like, don't trip, I have got you.

2 I don't doubt that his friend might have given
3 him some money the next day because he looks out for him,
4 he is going to protect him. And he may have done that,
5 but did they prove beyond a reasonable doubt that when he
6 said, hey, I have got you, that he was going to give him
7 a half an ounce of something that Mr. Prieto didn't know
8 because there was nothing in any phone call suggesting he
9 knew what half ounce he was getting, what it was.

10 Now, something present in this case is
11 tunnel vision. The government has ignored evidence that
12 doesn't make sense in its case. The digital recorder,
13 statements of all these other people at that early
14 occasion when my client supposedly said I am OVS. How
15 come everybody else got recorded and he didn't get
16 recorded when he said that? Doesn't seem to make sense.

17 No write-ups for the jail graffiti. Why did
18 that officer come in here and say something that just
19 doesn't make any sense whatsoever? He even said if I had
20 known Vega had done that, even if I didn't see him, I
21 would have written him up. But he says he saw Prieto and
22 didn't write him up and didn't take a picture of it when
23 he said he would have done that if he had seen it.

24 Crook, they let their witness get up there and
25 say, oh, Crook, there is nobody else in the gang. But

1 there is. Samuel Solorio. But they put their head in
2 the sand because that doesn't go with their theory of the
3 case. So let's not look into this too much. Let's
4 ignore that because my theory of the case is this Crook
5 has to be Raul Prieto. So, hey, see no evil, hear no
6 evil. We are on our way to some convictions and let's
7 just move forward. Thousands of calls. Two, with my
8 client. And they have known each other for years.

9 Now, quickly, I want to show you the jury
10 instructions that are relevant. Jury Instruction No. 3,
11 reasonable doubt. You heard it from several of us. I
12 apologize for pulling it off fast, but I have got to move
13 quickly. Jury Instruction No. 29, the fact that I have
14 highlighted some language doesn't mean I want you to
15 ignore the rest. I am just highlighting some things that
16 I find particularly important. The end of it. This is
17 the general instruction for conspiracy, similarly, a
18 person does not become a conspirator merely by
19 associating with one or more persons who are conspirators
20 nor merely by knowing that a conspiracy exists.

21 Mr. Prieto, associated with, and I have no
22 doubt that he knew that Mr. Rivera was doing some things
23 that might be crimes, but that doesn't make him a
24 conspirator.

25 Instruction No. 30, if you find that defendant

1 may have been guilty of another conspiracy but not one of
2 the ones charged, you have to find him not guilty
3 here. Was Mr. Prieto involved in a conspiracy to sell
4 ecstasy with someone? Maybe. But that is not a
5 conspiracy that you are facing.

6 Instruction 31, some very important
7 language. You may not find defendant responsible for
8 actions that occurred before the defendant joined the
9 conspiracy. As Mr. Navarro said, they never asked him to
10 do anything before, and he never did anything before.
11 But he apparently joined the gang after.

12 And Jury Instruction No. 35 shows the key
13 date, beginning on a date unknown, and continuing on or
14 about April 7th, 2010. Key date.

15 Jury Instruction No. 39, Count 5, same date.
16 Beginning on or about -- excuse me -- an unknown date and
17 ending on or about April 7th. Second, defendant joined
18 in the agreement knowing of its purpose. Did the
19 government show beyond a reasonable doubt that he knew of
20 its purpose? And the purpose being methamphetamine? Did
21 they show that Raul Prieto knew that beyond a reasonable
22 doubt and present you with that evidence? No, they did
23 not.

24 The verdict form, when you get to this,
25 unanimously find defendant Raul Prieto not guilty.

1 Because to find him guilty, you have to find all of these
2 elements against him beyond a reasonable doubt. Well,
3 that hasn't been done. He didn't do anything for the
4 gang. He didn't commit any crimes for the gang.

5 Count 5, unanimously find the defendant Raul
6 Prieto not guilty. But let's say you disagree with my
7 view of the facts and you find that he is guilty, do you
8 unanimously find that he conspired to distribute meth?
9 Well, in his phone calls, he talks about ecstasy, he
10 talks about cocaine. There is nothing in his phone calls
11 talking about methamphetamine. There is -- there is a
12 word half a bird. Half a bird of what? Half a bird of
13 what? Make sure you pay attention to that as you get to
14 that.

15 And then, finally, the phone call, he says I
16 want a half an ounce. 82-grams in an ounce so we are
17 talking about 14-grams. So, again, if you disagree with
18 my facts, where does 14-grams fit in on this? Right down
19 here. But I am hoping you agree with me that the
20 government hasn't proven this beyond a reasonable doubt
21 and you stop after No. 2.

22 So I just want to summarize. Moving so fast,
23 I lost the last page of my notes, but I don't need them.
24 I don't need them because I know what this case was
25 about. If I was sitting out on the tennis court with my

1 friends and they said, hey, what is your case about, I
2 can tell you. It is about a guy over here who wanted to
3 be like his friends. He saw his friend Rivera who was
4 president of OVS for many years, became a Black Angels.
5 They made fun of him because he couldn't read, couldn't
6 write. Didn't learn until he was 20. He wanted to be
7 like the guys. You know, hey, I can do this. You know,
8 let me do it. I can push that.

9 And his friend was like, hey, I got you. I
10 got you, bro. You know, I am looking out for you, but
11 how did he look out for him? By keeping him out of gang
12 business. Did he string him along over and over again?
13 Probably. How else can you account for the fact that
14 things happened with Rivera yet Mr. Prieto was never
15 involved. As Navarro said, he wasn't involved in the
16 gang business, and his friend kept him out. He was
17 protective of him.

18 I told you early on when we were in jury
19 selection, you know, you may believe there is life on
20 another planet but if this case was about them having to
21 prove it beyond a reasonable doubt, then it is not your
22 opinion. It is did they do that. Did they prove beyond
23 a reasonable doubt that Raul Prieto knew when he was
24 talking to Rivera that when Rivera was referring to half
25 a bird, that is what, you know, it was meth.

1 It was clearly meth. We don't have all those
2 other calls that they had for people with Tolson and
3 stuff like that. We don't have a drug seizure. We don't
4 have any of that circumstantial evidence that would show
5 that Mr. Prieto knew that they were talking about meth.
6 We have some undefined code words like half a bird that
7 Mr. Prieto was confused about.

8 Ladies and gentlemen, there may be life on
9 other planets, but there is no life in their case. They
10 didn't prove beyond a reasonable doubt that Mr. Raul
11 Prieto is guilty of Count 1 or Count 5. Mr. Prieto, you
12 know, he just -- he wasn't gang material. He knew that,
13 his friend Rivera knew that, you know that, the
14 government knows that.

15 But they put their head in the sand and now
16 they are asking you to ignore the evidence, ignore the
17 obvious lies from their police officers, ignore the lies
18 from their informant. And now just like, you know what,
19 it doesn't even matter because, yeah, we tried to
20 convince you he was a gang member but now it is not
21 important, let's just use the associated with. Well,
22 associated means he knowingly aids or furthers the
23 enterprise. And he didn't do that because, as
24 Mr. Navarro said, we never asked him to do anything. He
25 never did anything.

1 So, ladies and gentlemen, follow the law, look
2 at the evidence and please find that the government has
3 not proven the case against Mr. Prieto beyond a
4 reasonable doubt. Thank you.

5 THE COURT: All right. Thank you, Mr. Cephas.

6 MR. CEPHAS: Thank you, your Honor.

7 THE COURT: All right. Let's close it out.

8 MS. EL-AMAMY: This isn't a case about tennis
9 courts or life on other planets. This is what this case
10 is about. And this is how you pay for that. And these
11 defendants all worked together to help the criminal
12 enterprise run, buy guns for the gang, tax individuals
13 and make sure that the gang operated.

14 Now, we have heard a lot, a lot this
15 afternoon, and my job is to figure out what it is we
16 agree on and what it is we don't agree on.

17 And, your Honor, I am going to ask to show the
18 verdict forms which I think the court has already given
19 permission for me to do.

20 THE COURT: Please.

21 MS. EL-AMAMY: You are going to get verdict forms
22 for each of these three defendants, one for Jessica
23 Medina, one for Raul Prieto and one for Carlos Rivera.
24 Now Carlos Rivera's attorney has already told you there
25 are some things that aren't in dispute. The first of

1 these is the fact that Mr. Rivera is a felon in
2 possession of a firearm. He was a felon in possession of
3 a firearm that he got when he was at defendant Prieto's
4 house in July of 2009.

5 So on the last page of Mr. Rivera's verdict
6 form, you are going to find this count, and you the jury
7 should unanimously find defendant Carlos Rivera guilty of
8 that crime. His attorney told you to do it.

9 Now, he also said that he distributed
10 methamphetamine to Robert Tolson. That is Count 6.
11 Again, it is methamphetamine, it is not a secret. His
12 attorney told to you do it. He is guilty of that crime.

13 Now, what that also means is that he is guilty
14 of two racketeering acts, or he is guilty of at least
15 one racketeering act, Racketeering Act No. 6. And this
16 will be given to you in the jury instructions which you
17 will have back with you. Racketeering Act No. 6 is that
18 distribution of methamphetamine to Robert Tolson.

19 So right off the bat those are things that
20 aren't in dispute. Now, I will submit to you that there
21 is one other thing that is not in dispute right now. And
22 that is possession with intent to distribute
23 methamphetamine. You heard no argument about that count
24 from defendant Rivera's attorney. That is the
25 methamphetamine that was in this Tupperware hidden in

1 this compartment inside with defendant Rivera's
2 fingerprints on it. There is no dispute there.

3 Defendant Medina's attorney argued to you, it
4 was defendant Rivera's meth. He is guilty of that.

5 Now, what that requires is that you make a
6 finding, and we heard evidence as to what the quantity
7 was. The quantity was at least 50-grams of pure
8 methamphetamine. You saw the lab report. You heard the
9 evidence. That fact is not in dispute.

10 Now, you also heard Mr. Rivera's attorney go
11 on and on about this is how defendant Rivera makes his
12 money, he sells drugs. What is not in dispute is that
13 Mr. Rivera, putting aside these other defendants,
14 Mr. Rivera conspired to sell methamphetamine. He was
15 involved in a drug conspiracy.

16 My colleague got up there and talked to you
17 about Mr. Nicolada, the guy who brought him this
18 methamphetamine. He agreed at least with Mr. Nicolada to
19 get those 219-grams of pure methamphetamine. So as to
20 the drug conspiracy, that is Count 5 of the indictment,
21 Mr. Rivera is guilty of conspiracy. Now, do you
22 unanimously find that defendant Carlos Rivera conspired
23 to distribute methamphetamine? Yes. His attorney told
24 you that he did. You saw evidence of the drugs. You saw
25 how he got those drugs, and you saw that he has

1 distributed them on more than one date in the conspiracy
2 both to Mr. Tolson and he possessed those 219-grams, half
3 pound, nearly \$9,000 worth of methamphetamine that was in
4 that Acura. So, yes, he conspired to distribute
5 methamphetamine. And, again, yes, that was at least
6 50-grams of actual methamphetamine.

7 Now Mr. Medina's(sic) attorney got up there at
8 opening statements and told you at the beginning the
9 drugs in this case are simple. They are easy to
10 understand, and that is what we just knocked out right
11 now. That means you get to go back to the racketeering
12 acts that are part of Count 2.

13 Racketeering Act No. 1, again, that is the
14 conspiracy to distribute methamphetamine that we already
15 understand that defendant Rivera is guilty of. Proven.

16 Racketeering Act 7, again, this is this
17 possession to distribute 219-grams of methamphetamine
18 with his fingerprints on it. Proven. So that is a
19 substantial number of the counts against defendant
20 Rivera. We are going to get back to the RICO elements,
21 but right now those are the narcotics elements.

22 Now, let's talk about defendant Medina,
23 possession with intent to distribute that 219-grams of
24 methamphetamine. Now, in opening statements,
25 Ms. Medina's attorney told you that there was no evidence

1 that Ms. Medina was involved in the drug distribution
2 operation prior to August 6, 2009. She was taken off
3 guard. We know that is not true. We saw the evidence
4 during this trial.

5 One of the attorneys, Mr. Rivera's attorney
6 told you that David Navarro was the government's star
7 witness. No, he wasn't. The star witnesses are sitting
8 right up in front of you. The star witnesses are the
9 recorded conversations that each of these defendants had
10 in front of you, and the reason why David Navarro was up
11 on that stand for so long is because we were spending
12 time playing each of those recorded telephone
13 conversations.

14 Now, in his closing argument today,
15 Mr. Medina's(sic) attorney did not talk to you about her
16 involvement in the drug distribution operation prior to
17 August 6, 2009. This is a slide that was shown to you in
18 my opening statement. July 20th, 2009. This was an
19 example of Ms. Medina's involvement in the drug
20 distribution operation, and my colleague played evidence
21 related to that operation. That was the heina picking up
22 drugs all the time, and on this time she would give
23 directions. She was involved in selling drugs prior to
24 August 6, 2009, and any argument that she wasn't is
25 simply false.

1 You saw at trial, Exhibit 96, hello, Teresa
2 wants to roll through. Oh, she has got the money already
3 or what. That is drug money, money for a narcotics deal
4 that Ms. Medina was setting up. And defendant Rivera is
5 like, let me call this little fool and see if he is
6 ready. That is the drug runner, Francisco Venegas that
7 you heard the recorded telephone conversations of. That
8 is the same drug runner that after Mr. Rivera got
9 arrested Ms. Medina was giving orders to.

10 Ms. Medina's attorney told you that you didn't
11 hear Ms. Medina do anything in relation to the drug
12 operation. That is because she was the one telling you,
13 telling the people what to do. She was telling
14 Mr. Venegas what to do. She was telling Robert Tolson
15 what to do. And what she did is she paid the cell phone
16 bill and forwarded the calls so that drug operation would
17 still continue.

18 Exhibit 97, defendant Rivera tells Ms. Medina,
19 the mother of his children, I will hook her up. I will
20 hook her up fat, though. That is drugs. That is
21 methamphetamine.

22 And Exhibit 99, July 20th, 2009. This is
23 what my colleague played for you. Cause, usually, my
24 chick, my heina goes to pick that up for her and bring it
25 to the pad. Picking up the drugs. Remember how, she, my

1 chick, be going over there to grab it. And today it is
2 not going to happen like that. She gave her directions
3 so she should be there in like 20 minutes. Ms. Medina
4 gave directions to the narcotics customer to go get the
5 drugs.

6 Now, Ms. Medina's attorney has argued to you
7 that she didn't know what was in the car. Well, you
8 heard the telephone conversations. You heard the
9 telephone conversations. The police came to the house.
10 Mr. Rivera and Ms. Medina didn't have time to have a
11 conversation about, oh, no, there is drugs in the car.
12 In fact, Ms. Medina's attorney argued to you that she
13 knew the drugs were in the car, she wanted the drugs out
14 of the house so that they wouldn't get caught with them.
15 You can't argue that you didn't know that there were
16 drugs in the car and argue that she knew that the drugs
17 weren't in the house at the same time.

18 She knew there were drugs in that car, and she
19 grabbed those keys. It wasn't defendant Rivera who
20 grabbed the keys. It was Ms. Medina's idea to put it in
21 her back pocket. And you heard in the telephone
22 conversations that, you know, they didn't have time to
23 have a conversation. She wasn't instructed to do that,
24 and she did it because she didn't want the drugs linked
25 to the house, not to defendant Rivera to the house. She

1 was just a part of this drug business as Mr. Rivera. The
2 July 20th telephone conversations demonstrate that to
3 you. Her conversations right after that took place also
4 demonstrated that.

5 Now, we have already discussed how defendant
6 Rivera is guilty of the drugs that were in the car, and
7 Ms. Medina's attorney has argued to you that she can't be
8 found guilty for those drugs. Those drugs were
9 Mr. Rivera's drugs, not hers. Well, what was not
10 explained to you is what does it mean to possess. We
11 didn't hear that instruction. A person has possession of
12 something if the person knows of its presence and has
13 physical control of it or knows of its presence and has
14 the power and intention to control it. More than
15 one person can be in possession of something if each
16 knows of its presence and has the power and intention to
17 control it.

18 Both Mr. Rivera and Ms. Medina possessed those
19 drugs on that date, and the person who was in control of
20 the drugs, not the cops, not defendant Rivera, it was
21 Ms. Medina. The cops had to call AAA to even get into
22 the car. She was the person who possessed the drugs.

23 Now, the other instruction which was not read
24 to you when arguing that defendant Medina did not possess
25 the drugs, and let me give you the instruction. First,

1 on or about August 6, 2009, the defendant, defendant
2 Medina knowingly possessed the methamphetamine, and,
3 second, defendant Medina possessed it with the intent to
4 distribute it to another person.

5 Possess with intent to distribute means to
6 possess with intent to deliver or transfer possession of
7 methamphetamine to another person with or without a
8 financial interest in the transaction. It does not
9 matter whether the person knew that the substance was
10 methamphetamine. It is sufficient that defendant Medina
11 knew that it was some kind of prohibited drug.

12 The government is not required to prove the
13 amount or quantity of methamphetamine. It need only
14 prove beyond a reasonable doubt that this was a
15 measurable or detectable amount of methamphetamine. So
16 one of the arguments that Ms. Medina's attorney made in
17 this case is that she didn't know how much drugs were in
18 there.

19 Well, I submit that the evidence doesn't
20 demonstrate that. Ms. Medina was clearly interested in
21 making sure that the cops did not get the keys to those
22 cars. She knew that there was a large enough quantity in
23 there that bad things were going to happen if the cops
24 found those methamphetamine.

25 You heard in the recorded telephone

1 conversations. How far am I going to go with this. How
2 far am I going to go with this. And she kept the story
3 up because she did not want the cops to link the car with
4 the house. She didn't want anything bad to happen, and
5 it was important enough to her to lie again and again.
6 She told you in the recorded telephone conversations, I
7 know I can get in trouble for lying, but it was more
8 important for her to tell that lie than to get caught
9 with the keys or have defendant Rivera get caught with
10 the keys and caught with the drugs.

11 I would submit that she knew exactly what was
12 in that car. I would submit that she knew that it was
13 more than 50-grams of actual methamphetamine, and I would
14 submit that that is consistent with her knowledge that
15 there were \$3,000 of drug money in defendant Rivera's
16 pocket that day. I would submit that that is consistent
17 with her statement that she didn't want to get caught
18 with the drugs in the house.

19 Now, one of the things that was argued is that
20 they just possessed the drugs, they didn't really intend
21 to distribute it. Well, you have heard evidence at trial
22 how much an ounce costs. You know that half an ounce of
23 high quality meth is \$550. And you know that based on
24 math and taking that out, that was nearly \$9,000 worth of
25 drugs in that car, more than close to 2,000 doses of

1 methamphetamine to use. They weren't going to just sit
2 on that methamphetamine. They weren't going to just look
3 at it because it was cool. They were going to sell those
4 methamphetamines just like they did on July 20th. She,
5 other individuals like Mr. Venegas, like Mr. Tolson and
6 defendant Rivera and defendant Prieto were all going to
7 work together to sell the drugs.

8 I would submit -- I would submit that there
9 is sufficient evidence to unanimously find defendant
10 Medina guilty of possession of that methamphetamine in
11 that car. I would also submit that based on her actions
12 with law enforcement, the fact that there was \$3,000
13 worth of drug proceeds in the house, the fact that she
14 didn't want those drugs in her house, all of her actions
15 with respect to law enforcement, I would submit that
16 there is sufficient evident to prove beyond a reasonable
17 doubt that there was at least -- that she knew that there
18 was at least 50-grams of actual methamphetamine in that
19 car. And that is less than a quarter of the
20 methamphetamine that was actually found. There was
21 219-grams of actual methamphetamine. And, here, I submit
22 that there is enough evidence to find that there was at
23 least 50-grams in that car.

24 Now, Ms. Medina's attorney also talked to
25 you about the drug conspiracy which is Count 5. We

1 didn't go over the elements of that drug conspiracy. So
2 let's take a look at them.

3 MR. WALSH: Your Honor, I think the government has
4 exceeded their time limit that the court placed on them.

5 THE COURT: I got this.

6 MS. EL-AMAMY: Now, you are instructed that in
7 order to prove reasonable doubt that Ms. Medina conspired
8 to distribute methamphetamine, and the instruction says
9 heroin. We are not asking you to find heroin in this
10 case, just methamphetamine.

11 First, beginning on an unknown date and ending
12 on or about April 7th, 2010, there was an agreement
13 between two or more people to distribute methamphetamine
14 and, second, the defendant joined in the agreement
15 knowing of its purpose and intending to help accomplish
16 it. And you have heard evidence that she did that.
17 Those calls on July 20th, that is evidence of her
18 participation and evidence of her participation and her
19 agreement as my colleague discussed for you occurred
20 after she took over the narcotics operation.

21 Now, Ms. Medina did things with respect to the
22 narcotics operation. One of the first things she did is
23 she called the registered owner of the Acura that she had
24 control over, that she had the keys to, the keys that she
25 hid, and she worked with him to change his story, make

1 sure that they were all on the same page regarding what
2 story they were going to tell to law enforcement.

3 Another thing that she did to help out with
4 the conspiracy is she paid for the telephone. And she
5 told you why. She said I went to go pay his cell phone
6 today talking about defendant Rivera, and I was going to
7 start forwarding her calls. And the reason why and you
8 heard in the recorded conversation she wanted to forward
9 the calls is because she wanted to keep the business
10 going. She wanted the customers to keep calling and keep
11 getting drugs.

12 She also enlisted her cousin. Her cousin --
13 and this happened on August 11. She agreed with her
14 cousin that he could push some drugs because Chino, he
15 used to deal with Chino, defendant Rivera as well. So
16 she paid for the cell phone bill. She got in touch with
17 the registered owner, and she found people including her
18 cousin to help her sell drugs.

19 MR. CEPHAS: Your Honor, I just want to object on
20 due process grounds. I believe the prosecutor has been
21 given much more leeway than us to exceed their time.

22 THE COURT: One word, counsel. I have got this.

23 MR. CEPHAS: Thank you, your Honor.

24 THE COURT: I appreciate it, but I have got this.

25 MS. EL-AMAMY: And you heard the calls in my

1 colleague's opening closing about Mr. Venegas and the
2 instructions that she gave to Mr. Venegas regarding
3 selling drugs as well.

4 Now, Ms. Medina's attorney has argued to you
5 that she didn't know there was a full amount in the car.
6 Well, after August 6, she did, and she kept the
7 conspiracy going. And so even if you find she didn't
8 know what was in that vehicle on August 6, 2009, she sure
9 did after the cops came and she kept the conspiracy
10 going.

11 I would submit that there is sufficient
12 evidence to find defendant Medina guilty of the narcotics
13 conspiracy, that there is sufficient evidence to find
14 beyond a reasonable doubt that she conspired to
15 distribute methamphetamine and that she knew even after
16 August 6th, 2009, that that conspiracy involved at least
17 50-grams of actual methamphetamine, again, less than a
18 quarter of what she found out was seized by the cops from
19 her Acura.

20 Now, let's talk about defendant Prieto and his
21 drug distribution involvement. You have heard arguments
22 that there weren't a lot of telephone calls between
23 Mr. Prieto and Mr. Rivera, but, yet, you hear that they
24 are extremely close and they consider each other to be
25 relatives and he calls the mother mom. They are talking,

1 and he knows what is going on. And his calls, there
2 aren't a lot of calls, but his calls demonstrate that he
3 knows what is going on.

4 Now, Mr. Prieto's role in this drug
5 distribution conspiracy is that he gives Mr. Rivera a
6 place to do his business, gang business, because this gun
7 right here isn't just a felon in possession charge. This
8 is a gang gun paid for with gang dues, paid for with gang
9 drug money. And the place where he did it is at
10 defendant Prieto's house, and you heard during this trial
11 that defendant Rivera is vocal about not doing stuff
12 where he can get caught. He doesn't want to do it in his
13 house. He wants to keep drugs in a car that is
14 registered to someone else, and he wants to do his gun
15 deals and drug deals at another place, specifically,
16 defendant Prieto's house.

17 And I submit to you that defendant Rivera
18 agreed to give Mr. Prieto \$550 worth of methamphetamine
19 in exchange for Mr. Prieto not doing a robbery. Now,
20 one explanation is that they are very close, he looks out
21 for him, he is a little brother.

22 Another explanation is that Mr. Rivera didn't
23 want defendant Prieto to get caught up in some robbery
24 and so that he wouldn't have some place where someone
25 would let him do his business. And so he is willing to

1 pay him \$550. \$550 is a lot of money, \$550 worth of
2 drugs so that Mr. Prieto doesn't get caught up in some
3 robbery. It was important to him, \$550 worth important.

4 Now, we talked about that call, in opening, I
5 am going to do a robbery, don't do the robbery, I am
6 going to get half a dead bird instead. And you heard
7 testimony that was not challenged by any of the
8 defendant's, testimony from Mr. Navarro that half a bird
9 is half a kilogram of methamphetamine.

10 MR. CEPHAS: Your Honor, object as misstating what
11 was said during the trial. That is not an accurate.

12 THE COURT: Overruled.

13 MS. EL-AMAMY: You also heard other examples
14 during this trial of instances where consistent, I would
15 submit, consistent with Mr. Navarro's testimony is
16 evidence that Mr. Rivera repeatedly used defendant
17 Prieto's house prior to August 6th, 2009, as a place to
18 do his drug deals. On July 29, 2009, defendant Rivera
19 told the customer that he had bomb methamphetamine, and
20 the customer on his own volunteered to go to Raul's
21 house. Now, later on during that conversation, you heard
22 defendant Rivera say, no, I can't go to Raul's house, I
23 just got busted there. He got busted there less than a
24 week before, July 22nd, 2009, and he had to post up some
25 place else.

1 August 2nd, 2009, defendant Rivera instructed
2 Mr. Venegas to meet a narcotics customer across the
3 street from Crook's house. And on August 5th, 2009, this
4 is in one of the recorded calls that you listened to,
5 defendant Prieto offered to help defendant Rivera collect
6 drug money from a narcotics customer. They didn't have a
7 lot of telephone conversations, but I submit if you look
8 at those transcripts which were shown to you repeatedly
9 during those trials, defendant Rivera and defendant
10 Prieto knew about how the business operated, they knew
11 about how much a ball was, how much it was sold for,
12 Mr. Prieto's offering to call the drug customer from
13 another line to collect that drug money.

14 Now, you heard, also, my colleague pointed out
15 to you how after that large quantity of methamphetamine,
16 Ms. Medina and defendant Prieto are extremely tight.
17 That was brought out at trial. It was argued. She -- it
18 can be reasonably inferred that she told him exactly how
19 much methamphetamine was seized from that house.
20 4-ounces. More than four -- 219 grams of pure
21 methamphetamine. And even after that date, defendant
22 Prieto is letting them use the house. Let's go to
23 Crook's house tomorrow so that Chino, defendant Rivera
24 can three-way with Bony and Ms. Medina. And what do you
25 think it is they are talking about?

1 Now, you got talked to about reasonable doubt,
2 but one of the things that you will see in the
3 instruction about reasonable doubt is common sense. You
4 don't check your common sense at the door. Common sense
5 tells you what it is they are talking about. Common
6 sense lets you know that when Mr. Rivera is talking to
7 Mr. Prieto about getting half a dead bird, he is talking
8 about methamphetamine, not marijuana, not any other drug
9 that we haven't heard in the case.

10 It is the methamphetamine that we saw at trial
11 that defendant Rivera got shortly after he talked to
12 defendant Prieto later on that day. There can be, I
13 submit, no reasonable doubt that defendant Prieto was
14 also involved in a drug conspiracy with defendant Rivera
15 and defendant Medina. And that drug conspiracy involved
16 methamphetamine.

17 I submit that there is sufficient evidence to
18 unanimously find defendant Prieto guilty as charged in
19 Count 5 of the indictment. I submit that there is
20 sufficient evidence to find that the drug in choice was
21 methamphetamine, the drug that he was talking to
22 defendant Rivera about very shortly, same day, within
23 hours of getting the methamphetamine delivered. And I
24 submit that the statement regarding half a dead bird
25 taken in conjunction with the fact that defendant Medina

1 learned that it was the full amount yet she is still
2 going over to Crook's house to do the three-way is
3 sufficient for you to find beyond a reasonable doubt that
4 that conspiracy involved at least 50-grams of
5 methamphetamine.

6 Now, those are all the drug counts.

7 THE COURT: Ms. El-Amamy, the nondrug count has
8 been conceded. Let's wrap it up.

9 MS. EL-AMAMY: Okay. And one call that my
10 colleague did not get a chance to talk to you about is
11 Exhibit 152, and that was defendant Medina's involvement
12 in the gang activity. One thing that wasn't talked about
13 is even putting aside all the telephone conversations
14 that she was partially involved in --

15 MR. WALSH: I will object, your Honor. If it
16 wasn't talked about in the opening, rebuttal is not an
17 opportunity to supplement.

18 THE COURT: I want it wrapped up.

19 MS. EL-AMAMY: An OVS member came to defendant
20 Medina's house to figure out that the phone was tapped.
21 Ms. Medina, in addition to selling her drugs and
22 defendant Rivera's drugs, was helping out the gang by
23 making sure that their phones weren't tapped.

24 I will submit at this point.

25 THE COURT: All right. Thank you, counsel. All

1 right.

2 Ladies and gentlemen, when you begin your
3 deliberations, elect one member of the jury as your
4 foreperson who will preside over the deliberations and
5 speak for you here in court.

6 You will then discuss the case with your
7 fellow jurors to reach agreement if you can do so. Your
8 verdict, whether guilty or not guilty, must be unanimous.

9 Each of you must decide the case for yourself,
10 but you should do so only after you have considered all
11 the evidence, discussed it fully with the other jurors
12 and listened to the views of your fellow jurors.

13 Do not be afraid to change your opinion if the
14 discussion persuades you that you should. But do not
15 come to a decision simply because other jurors think it
16 is right.

17 It is important that you attempt to reach a
18 unanimous verdict but, of course, only if each of you can
19 do so after having made your own conscientious decision.
20 Do not change an on honest belief about the weight and
21 effect of the evidence simply to reach a verdict.

22 As you noted, verdict forms have been prepared
23 for you. After you have reached unanimous agreement on
24 your verdicts, your foreperson should complete the
25 verdict form according to your deliberations, sign and

1 date them and advise the court security officer that you
2 are ready to return to the courtroom.

3 If it becomes necessary during your
4 deliberations to communicate with me, you may send a note
5 through the clerk or the bailiff or court security
6 officer signed by one or more of you. No member of the
7 jury should ever attempt to communicate with me except by
8 a signed writing. And I will respond to the jury
9 concerning the case only in writing or here in open
10 court.

11 If you send out a question, I will consult
12 with the lawyers before answering it which may take some
13 time. You may continue your deliberations while waiting
14 for the answer to any question.

15 Remember, that you are not to tell anyone
16 including me how the jury stands numerically or otherwise
17 on any question submitted to you including the question
18 of guilt of the defendants until after you have reached a
19 unanimous verdict or have been discharged.

20 Officer Williams.

21 (The court security officer was sworn.)

22 THE CLERK: Please state your name spelling your
23 last name for the record.

24 THE COURT SECURITY OFFICER: Vernon Williams,
25 W-I-L-L-I-A-M-S.

1 THE COURT: All right. Officer Williams, take
2 charge of the jury, please.

3 (Proceedings concluded.)
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

I hereby certify that pursuant to Section 753, Title 28,
United States Code, the foregoing is a true and correct
transcript of the stenographically reported proceedings held
in the above-entitled matter and that the transcript page
format is in conformance with the regulations of the
Judicial Conference of the United States.

Date:

/s/ Katie Thibodeaux, CSR No. 9858, RPR, CRR